

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND; PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND;
DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE SWAN;
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and McKESSON CORPORATION,
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**DECLARATION OF PAUL FLUM IN OPPOSITION TO PLAINTIFFS' MOTION TO
COMPEL McKESSON'S 30(B)(6) WITNESS AND TO PROVIDE MORE SPECIFIC
RESPONSES TO PLAINTIFFS' THIRD SET OF INTERROGATORIES**

I, Paul Flum, declare as follows:

1. I am a partner of the law firm of Morrison & Foerster and one of the attorneys of record for McKesson Corporation in this action. I am familiar with the discovery in this case. I submit this declaration in opposition to plaintiffs' Motion to Compel McKesson Corporation's

30(b)(6) Witness and to Provide More Specific Responses to Plaintiffs' Third Set of Interrogatories.

McKesson's Rule 30(b)(6) Witness Was Prepared to Answer Questions Based on Her Personal Knowledge, Research She Conducted, and Information Gathered by McKesson

2. I defended the deposition of Michelle Glasco, McKesson's Human Resources Manager, on May 8, 2007, in response to the plaintiffs' Rule 30(b)(6) deposition notice. Plaintiffs' notice sought specific information about job titles, departmental affiliations, last known addresses, and organizational details about McKesson's production of the documents from files maintained by 52 current and former employees located around the country.

3. No single witness possesses all the information sought by notice. Ms. Glasco was designated to testify on McKesson's behalf because many of the topics specified in the notice related to personnel issues. McKesson took reasonable steps to educate Ms. Glasco about the other topics specified in the notice.

4. Because the notice sought a great deal of highly factual information that was not practicable for Ms. Glasco to memorize, McKesson provided her with a chart listing detailed information about the custodians, how their document productions were organized, and where the documents came from. Ms. Glasco reviewed the chart in preparation for her deposition and brought the chart with her to consult as necessary during the deposition.

Plaintiffs Did Not Request or Hold a Discovery Conference Regarding the Adequacy of McKesson's Rule 30(b)(6) Witness

5. Two days after Ms. Glasco's deposition, on May 10, 2007, plaintiffs' counsel wrote another one of the attorneys representing McKesson in this action, Tiffany Cheung, to request that McKesson produce another Rule 30(b)(6) witness within ten days.

6. I was in the process of drafting a response to counsel's letter on May 15 when plaintiffs filed their motion to compel. Plaintiffs' counsel did not request or conduct a discovery conference about the adequacy of McKesson's Rule 30(b)(6) witness before filing their motion to compel.

7. The only discovery conference that plaintiffs conducted that relates to any of the topics presented by plaintiffs' motion consisted of two telephone calls on April 30 and May 4, 2007. Those calls addressed each side's responses to the other side's contention interrogatories. There was no discussion of any claimed inadequacies of McKesson's Rule 30(b)(6) witness, nor could there have been, since the phone calls took place before the May 8 deposition.

McKesson's Interrogatory Responses Identify the Witnesses and Documents that Form the Source of Its Information about Its Affirmative Defenses, as Required by the Local Rules

8. Discovery in this case and the related AWP MDL has involved millions of pages of documents and hundreds of depositions. To comply with plaintiffs' interrogatories asking McKesson to "state the basis" for its affirmative defenses, McKesson disclosed the results of its review of that voluminous record by identifying witnesses and documents that formed "any part of the source" for its information about its defenses.

9. As required by Local Rule 26.5(c)(8), McKesson's interrogatory responses list the individuals, identified by name, who were parties or witnesses to any of the communications that comprise the source for each defense. McKesson's interrogatory responses list the documents, identified by Bates number, that comprise the source for each defense. Responsive witnesses and documents are listed separately for each affirmative defense. Different sets of witnesses and documents are identified for each affirmative defense.

10. McKesson's interrogatory responses also disclose the name of each witness's employer, where that information is known to McKesson. Sometimes, witnesses were listed in emails or other communications without any indication of whom they worked for. As McKesson explained to plaintiffs' counsel during the parties' April 30 meet and confer telephone call about the interrogatory responses, McKesson could not disclose such witnesses' affiliations. I also explained to counsel that if a witness's employer is not listed in McKesson's interrogatory response, it is because that information was not known to McKesson.

11. A true and correct copy of McKesson's Second Amended Response to Plaintiffs' Third Set of Interrogatories is attached as Exhibit 1. A true and correct copy of Plaintiffs' Third

Amended Responses and Objections to McKesson's First Set of Interrogatories is attached as Exhibit 2.

**Plaintiffs Refused to Produce a Witness to Testify About
Their Own Search for Responsive Documents**

12. On October 26, 2006, McKesson served its Second Amended Notice of Plaintiff District Council 37 pursuant to Rule 30(b)(6). Among the topics identified in the notice was "Your search for documents requested in McKesson's First Request for Production of Documents." A true and correct of McKesson's deposition notice is attached as Exhibit 3.

13. McKesson took District Council 37's deposition on November 6, 2006. District Council 37 produced its administrator, Rosaria Esperon, as its sole witness. Ms. Esperon testified that document collection had been conducted under the supervision of District Council 37's in-house counsel. Ms. Esperon testified that she had not been involved in District Council 37's document production and could not answer questions about the search.

14. McKesson held a discovery conference regarding various deficiencies in District Council 37's document production and deposition testimony on November 20, 2006. David Nalven and Barbara Mahoney, both of Hagens Berman Sobol Shapiro, represented District Council 37 at that discovery conference. I participated on behalf of McKesson.

15. During the November 20 conference, I asked Mr. Nalven to produce District Council 37's in-house counsel to testify about District Council 37's document search. Mr. Nalven responded that counsel's document search was protected by the work product doctrine and said that it would be improper to depose in-house counsel.

McKesson's Document Search Was Conducted by Legal Counsel

16. The search for documents responsive to plaintiffs' requests to McKesson in this case was done by attorneys and paralegals working for Morrison & Foerster and McKesson.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 29th day of May, 2007, in San Francisco, California.

By: /s/ Paul Flum
Paul Flum

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party through the Court's electronic filing service on May 29, 2007.

/s/ Paul Flum
Paul Flum

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND;
DISTRICT COUNCIL 37, AFSCME-HEALTH &
SECURITY PLAN; JUNE SWAN; MAUREEN
COWIE and BERNARD GORTER,

Plaintiffs,

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FIRST DATABANK, INC., a Missouri
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Defendants.

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**DEFENDANT MCKESSON CORPORATION'S SECOND AMENDED RESPONSE TO
PLAINTIFFS' THIRD SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Defendant McKesson Corporation ("McKesson"), by its attorneys, Morrison & Foerster LLP, objects to and responds to Plaintiffs' Third Set of Interrogatories, as propounded by Plaintiffs, as follows:

GENERAL OBJECTIONS TO INTERROGATORIES

1. McKesson objects to the definitions of "You" and "Yours" to the extent they purport to require the furnishing of documents or information in the possession, custody, or control of persons or entities other than McKesson.

2. McKesson objects to the definition of “Document(s)” on the grounds that this definition is overly broad and unduly burdensome, including to the extent it purports to broaden the definition in Local Rule 26.5(c)(2).

3. McKesson objects to the definition of “All documents” on the grounds that this definition is overly broad and unduly burdensome. McKesson further objects to this definition to the extent that it seeks original documents or purports to require the production of documents in the possession, custody, or control of persons or entities other than McKesson.

4. McKesson objects to the definition of “Communication” and “Communications” as overly broad and unduly burdensome, including to the extent it purports to broaden the definition in Local Rule 26.5(c)(1).

5. McKesson objects to the interrogatory to the extent it purports to broaden the definition of “state the basis” in Local Rule 26.5(c)(8).

6. McKesson objects to the Definitions, both individually and collectively, to the extent they seek to create any obligation to provide information in a manner not required under the Federal Rules of Civil Procedure or other applicable law. McKesson expressly disclaims any such obligation and objects to any attempt to impose any further or greater obligation upon it to collect or produce information or to supplement these responses, except as may be imposed by law, regulation, or court order.

7. McKesson objects to the interrogatory to the extent it seeks information that is not within McKesson’s possession, custody or control.

8. McKesson is responding to Plaintiffs’ interrogatory based solely on McKesson’s own knowledge and investigation. McKesson’s investigation of the facts is continuing and it reserves the right to amend, modify, or supplement its responses. It is possible that additional information may be discovered that is responsive to Plaintiffs’ interrogatory. McKesson’s responses are based upon the information currently available to it.

9. McKesson objects to the interrogatory to the extent it seeks information protected by the attorney-client privilege, work product doctrine, or any other applicable privilege. If any

information subject to a privilege, immunity, or protection is inadvertently disclosed by McKesson, such disclosure does not constitute a waiver of any privilege, immunity, or protection.

10. McKesson objects to the interrogatory to the extent it seeks information that is publicly available or readily available to the plaintiffs.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Subject to and without waiver of the foregoing general objections, McKesson provides the following responses to specific interrogatories:

INTERROGATORY NO. 1:

State the basis for each of Your affirmative defenses, including but not limited to an identification of each and every document, each and every communication and each and every witness in support thereof.

RESPONSE TO NO. 1:

McKesson served its objections to this interrogatory on March 26, 2007, and met and conferred with plaintiffs on April 3, 2007. A stipulation withdrawing the parties' respective objections to the timing of "state the basis" interrogatories and McKesson's objection to the number of interrogatories embodied in Interrogatory No. 1 was filed on April 5, 2007. McKesson incorporates by reference each of the general objections, and each of the specific objections to the extent not explicitly addressed by the stipulation, as if fully set forth herein. Subject to and without waiver of the foregoing general and specific objections, McKesson responds as follows:

First Affirmative Defense: "The Complaint fails to state a claim against McKesson upon which relief can be granted."

Basis

This defense is based solely on plaintiffs' Second Amended Complaint and presents a legal argument. Assuming plaintiffs' allegations to be true for purposes of this defense only, McKesson asserts that plaintiffs' claims fail as a matter of law. McKesson reserves all positions and arguments regarding this affirmative defense that were raised in its motion to dismiss plaintiffs' complaint, filed on October 19, 2005.

Second Affirmative Defense: "The Complaint fails to plead its claims against McKesson with sufficient particularity as required by Fed. R. Civ. P. 9(b)."

Basis

This defense is based on solely plaintiffs' Second Amended Complaint and presents a legal argument. McKesson contends that the Second Amended Complaint fails to comply with the pleading requirements of Federal Rule of Civil Procedure 9(b). McKesson reserves all positions and arguments regarding this affirmative defense that were raised in its motion to dismiss plaintiffs' complaint, filed on October 19, 2005.

Third Affirmative Defense: "Plaintiffs' and the putative class's claims are barred, in whole or in part, by Plaintiffs' lack of standing."

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the named plaintiffs or any absent members of the putative classes lack standing because, among other reasons, they (1) did not rely on any misrepresentations by McKesson and/or First Databank; (2) any chain of causation was broken by the role of pharmacy benefit managers and others in the reimbursement system for self-administered prescription drugs; (3) one or more named plaintiffs or absent class members did not sustain damages as a result of any actions by McKesson; and/or (4) certain state laws alleged in the complaint do not apply to

non-consumers. The evidence referenced in this response shows that the named plaintiffs and absent member of the putative classes were able to counteract some or all of the economic impact of the increased WAC to AWP markups alleged in the Complaint by negotiating new or revised reimbursement contracts with more favorable terms during the purported class period; receiving, either through negotiation or by operation of the terms of existing contracts, larger rebates on purchases of prescription drugs; and/or reducing their costs of prescription drug benefits through revisions to the terms of the applicable prescription drug benefit plans or insurance policies governing their payment or reimbursement obligations. In addition, some named plaintiffs and absent members of the purported classes did not pay for or reimburse purchases of brand-name prescription drugs that are the subject of this case based on AWP published by First DataBank, either because reimbursements were based on another source of AWP or because they were based on usual and customary pricing rather than AWP. In addition, the purported payor class includes entities that do not qualify as consumers under the laws of certain of the jurisdictions alleged in the complaint. In addition, McKesson did not set AWP published by First DataBank; McKesson established its own suggested sell price, which it reported to FDB in response to what it understood was a survey process. Throughout the alleged class period, FDB represented to McKesson, consistent with FDB's public statements, that FDB's AWP were derived by it from a survey of multiple wholesalers. Plaintiffs' own Complaint allegations concede that multiple wholesalers continued to provide FDB with pricing information through most of the Class Period. FDB has affirmed in the MDL that it did not tell McKesson that McKesson was the only wholesaler at times being surveyed by FDB.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- Aaron King (Advance PCS)
- Aaron Krakow (unknown)
- Agnes Reitano (Defense Supply Center Philadelphia)
- Al Goeken (Glaxo)
- Alan J. Milbauer (AstraZeneca)
- Albert Thigpen (AdvancePCS)
- Alex Gorski
- Alisha Nielsen (First DataBank)
- Allan Zimmerman (District Council 37)
- Amy Malone (Cardinal)
- Andrew Price
- Anne Faul (Glaxo)
- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)
- Audrey Browne (District Council 37)
- Barbara Edmonds (District Council 37)
- Bernard Gorter
- Beth Wingate (Express Scripts, Inc.)
- Bob Croft
- Bob James (McKesson)
- Brent Stansbury (Aventis)
- C. Chin-Marshall (unknown)
- Carol Sidwell (John Deere Healthcare)
- Carolle Caron (Aventis)
- Cathy McDougale
- Chad Lucero (Medics)
- Christina Macinski (Express Scripts, Inc.)
- Claire Brunken (Aventis)

- Clayton Bishop (US Pharmaceuticals)
- Connie Dominlanni
- Cynthia-Lynn Davies (AstraZeneca)
- Dan Mandoli (Express Scripts, Inc.)
- Daniel Salemi (Albertson's)
- Dave Pickhardt (Aventis)
- David Brennan (AstraZeneca)
- David Brenner (Segal)
- David Brodsky (Express Scripts, Inc.)
- David Joyner (Caremark)
- David Kuehl (AmerisourceBergen)
- David Sheffield
- Deborah Young (Advance PCS)
- Diana Clark (UEBT)
- Diane Ortiz (Johnson & Johnson)
- Don G. Beamish
- Donny Dowlen (Southern Benefit Administrators)
- Earl Seymour (Pirelli Armstrong Retiree Medical Benefits Trust)
- Ed Bissler (McKesson)
- Edward Ignzaczak (Express Scripts, Inc.)
- Edwin Hedblom (Express Scripts, Inc.)
- Elaine Kiso (First DataBank)
- Ellen Perlman (Express Scripts, Inc.)
- Ena West (AstraZeneca)
- Erik Schultz (AstraZeneca)
- Erlinda Thomas (McKesson)
- Ernie Walker (District Council 37)

- Ernst R. Berndt (Massachusetts Institute of Technology)
- Everette Neville (Express Scripts, Inc.)
- Francis Curtis (District Council 37)
- Gail Quam
- Gary Dean (District Council 37)
- Glenn Engelmann (AstraZeneca)
- Glenn Forester (Aventis)
- Greg Yonko (McKesson)
- Gregory Madsen (Caremark)
- Guerdon Green (Aventis)
- Harry Dow (Segal)
- Harry Vargo (Express Scripts, Inc.)
- Henry Salvadori (Segal)
- Inna Dimishteyn (First DataBank)
- J. Thoens (unknown)
- Jack Fragie (McKesson), Larry Greco (McKesson)
- Jacqueline Posniack (Segal)
- James Buckley (New England Carpenters Health Benefits Fund)
- James Grosso (unknown)
- James Kenney (Harvard Pilgrim Health Care)
- James Liebman (AstraZeneca)
- James McGee (HCCCC)
- Jason Dohm (Express Scripts, Inc.)
- Jeff Wagner (Aventis)
- Jeremy Gott
- Jerry Holleman
- Jerry Merida (Aventis)

- Jill Krasting
- Jim McDermott (Aventis)
- Jim Shaner (Aventis)
- Jody Taylor (Cardinal Health)
- Johan Hoegstedt (AstraZeneca)
- John Bonner (McKesson)
- John Cervione (Aventis)
- John Cotton (Segal)
- John Freeberry (AstraZeneca)
- John O'Reilly (unknown)
- John Rasulo (National Prescription Administrators)
- John Schohl (Medicis)
- John Szabo (Bristol-Myers Squibb)
- Joseph L. Hirschmann (FirstDataBank)
- Joseph Leonardi (Aventis)
- Judith Maurath (APAIE 618 Health)
- June Swan
- Kathleen Zemanek (AstraZeneca)
- Kathryn Stripling (AstraZeneca)
- Kathy Buto
- Kathy Stinehagen (AstraZeneca)
- Kaylor P. Kowash (AstraZeneca)
- Kevin Connor (McKesson)
- Kim Becker (Express Scripts, Inc.)
- L. Griffin (unknown)
- LaGreta Cosey (First DataBank)
- Laura Albergo (District Council 37)

- Leslie Friedman (McKesson)
- Lillian Roberts (District Council 37)
- Lillie Laws (Aventis)
- Lora Henager (Medicis)
- Lori White (Defense Supply Center Philadelphia)
- Louise Mehrotra
- Mahendra M. Gupta
- Marc Palmer (Express Scripts, Inc.)
- Marilyn Gordon (ESI)
- Mark Johnston (Aventis)
- Mark L. Rickards
- Mark Milby
- Mary Harmon (Aventis)
- Matthew Gibbs (Hewitt)
- Michael Bannon
- Michael Fowler (Defense Supply Center Philadelphia)
- Michael Nelson (First DataBank)
- Michael P. Hickey
- Mike Anderson (Express Scripts, Inc.)
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Nancy Treglia-Saiduc (Express Scripts, Inc.)
- O. Wade (unknown)
- Oliver Gray (District Council 37)
- Onita Wade (District Council 37)
- Pamela Roberts (Express Scripts, Inc.)
- Patricia Kay Morgan (First DataBank)
- Paul Vasquez (Defense Supply Center Philadelphia)

- Pauline Chrenko (Aventis)
- Peter Krebs (US Pharmaceuticals)
- Peter Ngau (First DataBank)
- Pia Castillo (McKesson)
- Rachel Bloom-Baglin
- Ramon Crusit (McKesson)
- Rhonda Murphy (US Pharmaceuticals)
- Rhonda Rees
- Rich Fante (AstraZeneca)
- Richard Hopp (unknown),
- RMK (US Pharmaceuticals)
- Robert Hasiak (District Council 37)
- Robert Spurr (Aventis)
- Rock Magnotta (ALZA)
- Ron Tyson (Express Scripts, Inc.)
- Rosaria Esperon (District Council 37)
- Rosemarie Mongillo (Advance PCS)
- Roslyn Yasser (District Council 37)
- Russ Graham (Aventis)
- Ryan Soderstrom (Express Scripts, Inc.)
- Sara Sullivan (Advance PCS)
- Sarah S. Harrison
- Simone Rockstroh (HCCCC)
- Stacy Chick (Aventis)
- Stephanie Ellerman (Express Scripts, Inc.)
- Stephen Duda (Defense Supply Center Philadelphia)
- Stuart Bascomb (Express Scripts, Inc.)

- Stuart Fullerton (AstraZeneca)
- Sue Sommer (Express Scripts, Inc.)
- Susan Hayes (Physician Outcomes Specialists)
- T. Whittaker (District Council 37)
- Terri Factora (First DataBank)
- Thomas Gilson (Medco)
- Thomas Scono
- Tina Wong (Blue Cross Blue Shield Montana)
- Tom J. Lyons
- Tyrone Brewer (Aventis)
- Vinny Graziano (Segal)
- W. Chang (unknown)
- William Dale (unknown)
- William DiLauro (Defense Supply Center Philadelphia)
- William Einhorn (Teamster Health and Welfare Fund)
- William Fleming (Humana)
- William Wright (First DataBank)
- Willie Chang (District Council 37)
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The documents forming a part of the source of McKesson's information regarding this defense include:

- ABC (AWP) 001954-001966
- AV-BCA-0010336
- AZ00707930
- AZ0432026-34
- AZ0463627-29
- AZ0463635-38

- AZ0464456
- AZ0464857-859
- AZ0468027-AZ0468040
- AZ0468041-AZ0468091
- AZ0565611-14
- AZ0692307-692311
- BMS/AWP/000125481-125516
- Car.Hlth/SLB 0739397
- Car.Hlth/SLB 0739496-97
- Car.Hlth/SLB 0739505-507
- Car.Hlth/SLB 0739530
- Car.Hlth/SLB 0740040-43
- Car.Hlth/SLB 0740406-08
- CARP 01994-1995
- CARP 02094-2095
- CARP-00091-189
- CARP-00274-275
- CARP-00291-292
- CMK-AWP 001888-2009
- CMK-AWP 011582-95
- CMK-AWP 012815-36
- CMK-AWP 012850-53
- CMK-AWP 012857-75
- CMK-AWP 013102-76
- CMK-AWP 013201-207
- CMK-AWP-001888-2009
- CMK-NECarp 000487-603

- CMK-NECarp 00486
- D37 00480-500
- D37 00831-0869
- D37 01064-69
- D37 01405-07
- D37 01428-01463
- D37 0446-61
- D37 0480-500
- D37 0673
- D37 0705-A-H
- D37 0711-A-D
- D37 0831-0869
- D370001-0012
- D37-ESI001-003
- DC37 02384-02413
- DC37 06204-06205
- DC37 06222-06227
- DC37 06402
- DC37 06597-06598
- DC37 06973-90
- DC37 07595-600
- DC37 07595-DC37 07599
- DC37 07974-07977
- DC37 08419-08421
- DC37 08427
- DC37 08478-08488
- DC37 08555-08564

- DC37 08685-08690
- DC37 09800-09803
- DC37 09804-09810
- DC37 09837-09843
- ESI-277-00002640-56
- ESI-414-00001711-30
- ESI-414-00001731
- ESI-414-00001740-41
- ESI-414-00001762-63
- ESI-414-00001768-71
- ESI-414-00001794
- ESI-414-00001802
- ESI-414-00001805-6
- ESI-414-00001807-08
- ESI-414-00001884-2163
- ESI-414-00002411
- ESI-414-00003711-12
- ESI-414-00003758-59
- ESI-414-00004101
- ESI-414-00007160
- FDB/NEC 005951
- FDB/NEC 006017
- FDB/NEC 008778
- FDB/NEC 015320
- FDB/NEC 018437-39
- FDB/NEC 018441
- FDB/NEC 018644-47

- FDB/NEC 018650-53
- FDB/NEC 018682-711
- FDB/NEC 018813-16
- FDB/NEC 12248-53
- FDB-AWP 02005
- FDB-AWP 028338-028342
- FDB-AWP 032194-32202
- FDB-AWP 046440-441
- FDB-AWP 046953
- FDB-AWP 051757
- FDB-AWP 053695
- FDB-AWP 29178
- HCCCC-AWP0254-55
- MCKAWP 0035460
- MCKAWP 0042515
- MCKAWP 0042663-70
- MCKAWP 0052115-18
- MCKAWP 0057171
- MCKAWP 0057172
- MCKAWP 0057174
- MCKAWP 0063067
- MCKAWP 0063071
- MCKAWP 0065883
- MCKAWP 0066001
- MCKAWP 0068132
- MCKAWP 0068261-62
- MCKAWP 0068304

- MCKAWP 0068311
- MCKAWP 0068514
- MCKAWP 0068519
- MCKAWP 0068603-04
- MCKAWP 0069590
- MCKAWP 0069591
- MCKAWP 0069592-93
- MCKAWP 0069608-10
- MCKAWP 0069611-13
- MCKAWP 0069614
- MCKAWP 0069766
- MCKAWP 0069942
- MCKAWP 0071419-21
- MCKAWP 0071422-24
- MCKAWP 0071694-5
- MDL-CEN00103689
- MHS A_0005138-52
- MHS A_0005153-59
- MHS A_0005160-72
- MHS A_0005173-75
- MHS A_0005177-85
- NPC 0066414-420
- Patricia Kay Morgan Exhibit 49
- PFTH-FDB 002053-2054
- PFTHW 0156
- PFTHW 1415-1454
- PFTHW 2459

- PFTHW 2478
- PFTHW-FDB 000027-56
- PFTHW-FDB 000645-000684
- PFTHW-FDB 001978-1985
- PFTHW-FDB 002042
- PFTHW-FDB 002044
- PFTHW-FDB 002112-002135
- PFTWH 2479
- PIRELLI-FDB 0000277-323
- PIRELLI-FDB 0000329
- PIRELLI-FDB 0000340
- Segal/NEC 04782-04786
- Segal/NEC 04792-04829
- Segal/NEC 06584-06587
- Segal-Carpenter 000245-256
- Segal-Carpenter 000293-299
- Segal-Carpenter 000308-309
- Segal-Carpenter 001114-116
- Segal-Carpenter 001623-624
- Segal-Carpenter 002501-514
- SEL_HLTH/NEC_0379-407
- THWF 0001 - 0034
- THWF 0147-152
- THWF 0181-83
- THWF 1852
- THWF 2104-2107
- THWF 3170-3171

- THWF 4802
- THWF 4808-4809

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Fourth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, by the doctrine of estoppel.”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the claims brought by or on behalf of the named plaintiffs or any absent member of the putative class are barred, in whole or in part, by the doctrine of estoppel. McKesson is not currently aware of any facts that would serve as the basis for this defense as against the named plaintiffs. Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

Fifth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, by the doctrine of waiver.”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the claims brought by or on behalf of the named plaintiffs or any absent member of the putative class are barred, in whole or in part, by the doctrine of waiver because, among other reasons, they had knowledge of the increased WAC to AWP markups and chose not to act thereon. The evidence referenced in this response shows that the named plaintiffs were put on notice of increased WAC to AWP markups through claims data provided by their PBMs, published prescription drug pricing reports, and by analyses conducted by benefit consultants. Absent members of the putative class received notice of the increase in AWP markups from PBMs, wholesalers and drug manufacturers, and through review of prescription drug pricing information published by First DataBank. McKesson is not currently aware of facts that would serve as the basis for this defense as against the named plaintiffs, other than as stated herein or described in the documents referenced below.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- A Brancati (Christiana Care)
- Aaron King (Advance PCS)
- Alex Krikorian (Express Scripts, Inc.)
- Allen Maltz (Blue Cross Blue Shield Massachusetts)
- Allison Cavanaugh (Express Scripts, Inc.)
- Amy Carlson (Express Scripts, Inc.)
- Andrew Avgoulas (Express Scripts, Inc.)

- Andrew Shim (Express Scripts, Inc.)
- Andy Parker (Express Scripts, Inc.)
- Angela Kilgore (Express Scripts, Inc.)
- Angela Shank (Express Scripts, Inc.)
- Anne Pena (Express Scripts, Inc.)
- Arnie Zopfi (Express Scripts, Inc.)
- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)
- Audrey Browne (District Council 37)
- Barbara Edmonds (District Council 37)
- Barry Rosenthal (Express Scripts, Inc.)
- Basem Shebli (NHP)
- Becky Kloos (Express Scripts, Inc.)
- Bernadette Eichelberger (Express Scripts, Inc.)
- Beth Wingate (Express Scripts, Inc.)
- Bill Kiefer (Express Scripts, Inc.)
- Bjorn Thommesen (Express Scripts, Inc.)
- Bob James (McKesson)
- Brad Cummings (Cascade Comprehensive Care)
- Brad Maas (Express Scripts, Inc.)
- Brenda Sabistina (Keller)
- Bruce Momess (Express Scripts, Inc.)
- C. Chin-Marshall (District Council 37)
- Carmen Fontanez (Express Scripts, Inc.)
- Carol Sidwell (John Deere)
- Caroline Arseth (Express Scripts, Inc.)
- Carrie Elizondo (Express Scripts, Inc.)
- Carrie Goldberg (Express Scripts, Inc.)

- Carrie Mielke (Express Scripts, Inc.)
- Cathy McDougale (Express Scripts, Inc.)
- Chad Franz (Express Scripts, Inc.)
- Charla Katz (Express Scripts, Inc.)
- Cheryl McAndrew (MDNY Healthcare)
- Cheryl Skoglund (Express Scripts, Inc.)
- Chris Robbins (MDNY Healthcare)
- Christina Macinski (Express Scripts, Inc.)
- Christine Konieczny (Express Scripts, Inc.)
- Christopher Antonio (Express Scripts, Inc.)
- Chuck Kneese (Express Scripts, Inc.)
- Cindy Solberg (Express Scripts, Inc.)
- Colleen Castleman (Express Scripts, Inc.)
- Craig Bogner
- Craig Reno (Express Scripts, Inc.)
- Crystalin Moyer (Express Scripts, Inc.)
- Cynthia Olivarez (Express Scripts, Inc.)
- Dale Bultemeier (Physicians' Health Plan)
- Dan Mandoli (Express Scripts, Inc.)
- Dan McKendry (Neighborhood Health Partnership)
- Darren Siversten (Sierra Health Services)
- David Brenner (Segal)
- David Cartwright (Express Scripts, Inc.)
- David Gretsche (Express Scripts, Inc.)
- David Joyner (AdvancePCS)
- Dawn Burton (Express Scripts, Inc.)
- Dawn Vignovich (Express Scripts, Inc.)

- Dawn Winget (Express Scripts, Inc.)
- Deanne Shaw (Express Scripts, Inc.)
- Deb Glunz (Express Scripts, Inc.)
- Debbie Rains (Express Scripts, Inc.)
- Deborah Young (Advance PCS)
- Debra James (Express Scripts, Inc.)
- Diana Clark (UEBT)
- Dolores Olmos (Express Scripts, Inc.)
- Don Nickels (Express Scripts, Inc.)
- Donna Larsen (Express Scripts, Inc.)
- Dr. Deborah Ratliff (Healthcare, Inc.)
- Dr. Rome Walker (Caralion)
- E. Walker (District Council 37)
- Ed Keating
- Edward Ignaczak (Express Scripts, Inc.)
- Edwin Hedblom
- Elizabeth Hendler (Express Scripts, Inc.)
- Ellen Perlman (Express Scripts, Inc.)
- Eric Cannon (SelectHealth)
- Eric Tvedt (Express Scripts, Inc.)
- Erik Walter (Express Scripts, Inc.)
- Erin Conley (Express Scripts, Inc.)
- Ernie Walker (District Council 37)
- Everette Neville (Express Scripts, Inc.)
- Francis Curtis (District Council 37)
- Frank Koronkiewicz (Blue Cross of Northeastern Pennsylvania)
- Fred Teitelbaum (Express Scripts, Inc.)

- Lynn Thomas
- G. Tomanelli (District Council 37)
- Gail Quam (Express Scripts, Inc.)
- Gary Dean (District Council 37)
- Gary Schmidt (Express Scripts, Inc.)
- Gary Schramek (Blue Cross Blue Shield of Massachusetts)
- Gennie Figiel (Express Scripts, Inc.)
- Geri DeClerck (Express Scripts, Inc.)
- Gerry Sander (Express Scripts, Inc.)
- Ginny Kula (Fallon)
- Harry Goldenberg (PHP Companies)
- Harry Vargo (Express Scripts, Inc.)
- Heather Sundar (Express Scripts, Inc.)
- Helen Baker (Express Scripts, Inc.)
- Henry Salvadori (Segal)
- Holly Anderson (Express Scripts, Inc.)
- Holly Trautman (Community Health Plan of Washington)
- Holz Mike (Express Scripts, Inc.)
- Howard Mazzafro (Express Scripts, Inc.)
- J. McKinley (McKinley Insurance)
- Jackie Swaim (Preferred One)
- Jacqueline Posniack (Segal)
- Jake Norman (Express Scripts, Inc.)
- Jamal Kadri-Tawil (Express Scripts, Inc.)
- James Buckley (New England Carpenters Health Benefits Fund)
- Janelle Ensrud (Express Scripts, Inc.)
- Janet Zachary-Elkind (Express Scripts, Inc.)

- Janice Grochal (Express Scripts, Inc.)
- Jannel McCullough (Express Scripts, Inc.)
- Jason Dohm (Express Scripts, Inc.)
- Jay Nanney (Express Scripts, Inc.)
- Jean Brooks (Express Scripts, Inc.)
- Jean Judd (Express Scripts, Inc.)
- Jean Stannard (Express Scripts, Inc.)
- Jeff Casberg (Express Scripts, Inc.)
- Jeff Martin
- Jeffrey Legg (Express Scripts, Inc.)
- Jeffrey Siebers (Express Scripts, Inc.)
- Jennifer Athmann (Express Scripts, Inc.)
- Jennifer Chase (Express Scripts, Inc.)
- Jennifer Goggin (Express Scripts, Inc.)
- Jennifer Kirk (Express Scripts, Inc.)
- Jennifer Twito (Express Scripts, Inc.)
- Jill Benson (Express Scripts, Inc.)
- Jim Peterson (Express Scripts, Inc.)
- Joann Gutz (Express Scripts, Inc.)
- Jodi DeJong (Express Scripts, Inc.)
- Jodi Harrington (Express Scripts, Inc.)
- Jodie McElroy (Express Scripts, Inc.)
- Joe Eschbacher (Express Scripts, Inc.)
- Joel Grodman (General Prescription Programs Inc.)
- John Abell (Express Scripts, Inc.)
- John Boyer (Express Scripts, Inc.)
- John Cotton (Segal)

- John Frederick (Preferred One)
- John Lynn (Express Scripts, Inc.)
- John Rasulo (National Prescription Administrators)
- Jon Keeley
- Jon Warren (Express Scripts, Inc.)
- Judith Maurath (APAIE 618 Health)
- Judy Martineau (Express Scripts, Inc.)
- Judy Myers (PHP Inc.)
- Julayna Meyer (Express Scripts, Inc.)
- Julia Steen (Partners Health)
- Julie Lynch (Express Scripts, Inc.)
- Julie McLaughlin (Express Scripts, Inc.)
- Julie O'Brien (Express Scripts, Inc.)
- Julius Ianniello (Express Scripts, Inc.)
- K Bates (Christiana Care)
- Karen Abe (Express Scripts, Inc.)
- Karen Oscarson (Express Scripts, Inc.)
- Karen Rodgers (Express Scripts, Inc.)
- Karen Ruh (Broward County)
- Karen Strait (Express Scripts, Inc.)
- Kari Tvedt (Express Scripts, Inc.)
- Kathleen Suel (Express Scripts, Inc.)
- Kathy Ferrell (Express Scripts, Inc.)
- Kathy McHugh (Express Scripts, Inc.)
- Kathy Stoner
- Kathy Stults (Express Scripts, Inc.)
- Kathy Warner (Evergreen Health Plan)

- Keith Trettin
- Kelli Hughes (Express Scripts, Inc.)
- Kelly Rhodus (Express Scripts, Inc.)
- Kelly Shultz (Express Scripts, Inc.)
- Ken Goldberg (Express Scripts, Inc.)
- Ken Waytashek (Express Scripts, Inc.)
- Kent Olson (Express Scripts, Inc.)
- Kent Wuflestad (Express Scripts, Inc.)
- Kerry Waldo (Express Scripts, Inc.)
- Kevin Baltrusch (Express Scripts, Inc.)
- Kim Becker (Express Scripts, Inc.)
- Kim Korte (Express Scripts, Inc.)
- Kim Olson (Blue Cross Blue Shield Massachusetts)
- Kim Staloch (Express Scripts, Inc.)
- Kris Nicklaus (Community Health Plan of Washington?)
- Kristine Carpenter (Express Scripts, Inc.)
- Lana Nguyen (Express Scripts, Inc.)
- Larry Keller (Ventura County Health Care Plan)
- Laura Albergo (District Council 37)
- Laurie Johnson (Express Scripts, Inc.)
- Laurie Voss (Express Scripts, Inc.)
- Leanne Howard (Express Scripts, Inc.)
- Lesley Hill (Express Scripts, Inc.)
- Lillian Roberts (District Council 37)
- Linda Chapeau (Preferred One)
- Linda Davis (Express Scripts, Inc.)
- Linda Koppin (Express Scripts, Inc.)

- Linda Rutledge (Wellpoint)
- Linda Vetter (Express Scripts, Inc.)
- Lisa Christy (Express Scripts, Inc.)
- Lisa Passino (Express Scripts, Inc.)
- Lisa Thompson (Express Scripts, Inc.)
- Lita Catapang (Ventura County Health Care Plan)
- Lori Barnes (Express Scripts, Inc.)
- Lynn S (Schaller Anderson)
- M. Carlton (McKinley Insurance)
- Mara Evenson (Express Scripts, Inc.)
- Marc Palmer (Express Scripts, Inc.)
- Marian Sutton (Express Scripts, Inc.)
- Marianne Scriven Iexpress Scripts, Inc.)
- Marie Moore (Express Scripts, Inc.)
- Marilyn Gordon (Express Scripts, Inc.)
- Marjorie Wittenborg (Express Scripts, Inc.)
- Mark Dowling (Express Scripts, Inc.)
- Mark Hughes (Express Scripts, Inc.)
- Mark Schwartz (Express Scripts, Inc.)
- Mark Stevens (Blue Cross Blue Shield Massachusetts)
- Mary Coyne (Express Scripts, Inc.)
- Mary Ellen Mullholand (Express Scripts, Inc.)
- Mary Ptacek (Express Scripts, Inc.)
- Mary Stemler (Express Scripts, Inc.)
- Marybeth Stemler (Express Scripts, Inc.)
- Matt Dietrich (Express Scripts, Inc.)
- Matthew Connell (Blue Cross Blue Shield Massachusetts)

- Matthew Gibbs (Hewitt)
- Matthew Ordner (Express Scripts, Inc.)
- Maureen Gauer (Express Scripts, Inc.)
- Megan Vorgert (Express Scripts, Inc.)
- Melissa Halverson (Express Scripts, Inc.)
- Melissa Torres (Express Scripts, Inc.)
- Michael Ackerman (CarePartners)
- Michael Dembrosky (Express Scripts, Inc.)
- Michael Hamacher
- Michael Hornquist (Express Scripts, Inc.)
- Mike Anderson
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Myrna Harvey (Western California)
- Nancy Christman
- Nancy Eid (Express Scripts, Inc.)
- Nancy Gilbride (Express Scripts, Inc.)
- Nancy Treglia-Saiduc (Express Scripts, Inc.)
- Oliver Gray (District Council 37)
- Onita Wade (District Council 37)
- Pam Earnhardt (Express Scripts, Inc.)
- Pam Ford (Express Scripts, Inc.)
- Pamela Roberts (Express Scripts, Inc.)
- Pat Jensen (Express Scripts, Inc.)
- Patrick Marks (Express Scripts, Inc.)
- Patty Beeler
- Paul Kociemba
- Paul Marcus (Express Scripts, Inc.)

- Paul Monson (Express Scripts, Inc.)
- Phyllis Amadi (Express Scripts, Inc.)
- Rachelle Johnston (Express Scripts, Inc.)
- Raj Kabali (Keystone Health Plan Central)
- Raulo Frear (Express Scripts, Inc.)
- Ray Bowman (Express Scripts, Inc.)
- Raymond Brown (Express Scripts, Inc.)
- Renee Callery (Express Scripts, Inc.)
- Renee Shimley (Express Scripts, Inc.)
- Rhonda Rees (Express Scripts, Inc.)
- Richard Ashby (Ventura County Health Care Plan)
- Richard Johnson
- Richard Koehler (District Council 37)
- Rob Noel (Express Scripts, Inc.)
- Rob Scott (Express Scripts, Inc.)
- Robert Hasiak (District Council 37)
- Robert Hull (Express Scripts, Inc.)
- Robert Jaramillo (AH Plans)
- Robin Kling (Express Scripts, Inc.)
- Ron Perrone (MDNY Healthcare)
- Ron Tyson (Express Scripts, Inc.)
- Ronald Fox (Express Scripts, Inc.)
- Rosaria Esperon (District Council 37)
- Rosemarie Mongillo (Advance PCS)
- Roslyn Yasser (District Council 37)
- Roy Arnold (Blue Cross Blue Shield Montana)
- Ryan Soderstrom (Express Scripts, Inc.)

- Samia Nasr (BJC)
- Sandi Deckinger
- Sandy Barklage (Express Scripts, Inc.)
- Sandy Ferguson (Express Scripts, Inc.)
- Sara Sullivan (Advance PCS)
- Sarah Stoces (Express Scripts, Inc.)
- Scott McCutcheon (Express Scripts, Inc.)
- Scott Vogel (Express Scripts, Inc.)
- Shahana Ahmed (Express Scripts, Inc.)
- Shannon Kampa (Express Scripts, Inc.)
- Sharon Edmunds (Express Scripts, Inc.)
- Sharon Reed (Express Scripts, Inc.)
- Sheila Bleeke (Express Scripts, Inc.)
- Shelly Laitala (Express Scripts, Inc.)
- Sheri Scheerer (Express Scripts, Inc.)
- Sherry Marg (Express Scripts, Inc.)
- Sonja Larson (Express Scripts, Inc.)
- Stacie Blake (Express Scripts, Inc.)
- Stacy Gray (Express Scripts, Inc.)
- Stephanie Anderson (Express Scripts, Inc.)
- Stephanie Kohnen (Express Scripts, Inc.)
- Stephanie Schroeder (Express Scripts, Inc.)
- Steve Burns (Postscript LLC)
- Steve Issacs (District Council 37)
- Steven Franklin (Express Scripts, Inc.)
- Steven Webb (Express Scripts, Inc.)
- Stuart Bascomb (Express Scripts, Inc.)

- Sue Crawford (Express Scripts, Inc.)
- Sue Fermstad (Express Scripts, Inc.)
- Sue Ricciardi (Christiana Care)
- Sue Sommer (Express Scripts, Inc.)
- Susan Feliciano (PHP Inc.)
- Susan Hayes (Pharmacy Outcomes Specialists)
- Susan Hollingsworth (Express Scripts, Inc.)
- Susan Murphy (Express Scripts, Inc.)
- Susan Ryan (Express Scripts, Inc.)
- Susan Slaughter (Express Scripts, Inc.)
- Suzanne Hilbert
- T. Whittaker (Segal)
- Tamara Chapman (Express Scripts, Inc.)
- Terence Miller (Express Scripts, Inc.)
- Teresa Foegelle (Express Scripts, Inc.)
- Teresa Stewart (Express Scripts, Inc.)
- Terri Lindquist (Express Scripts, Inc.)
- Terry Thomas (Express Scripts, Inc.)
- Thomas Gilson (Medco)
- Tim King (Express Scripts, Inc.)
- Tim Rackovan (Express Scripts, Inc.)
- Tim Williams (Express Scripts, Inc.)
- Tina Sprau (Express Scripts, Inc.)
- Tina Sturguess (Express Scripts, Inc.)
- Tina Wong (Blue Cross Blue Shield Montana)
- Tod Dennis (Express Scripts, Inc.)
- Tom Aufiero (Express Scripts, Inc.)

- Tom Giles (Express Scripts, Inc.)
- Tom Issacs (Express Scripts, Inc.)
- Tom Rechtein (Express Scripts, Inc.)
- Tony Kalal (Express Scripts, Inc.)
- Traci Orvis (Express Scripts, Inc.)
- Tracy Leine (Express Scripts, Inc.)
- Tricia Hunter (Express Scripts, Inc.)
- Tricia Pool (Express Scripts, Inc.)
- Valerie Chase (Express Scripts, Inc.)
- Vinny Graziano (Segal)
- W. Chang (District Council 37)
- Wendy Hemmen (Express Scripts, Inc.)
- William Einhorn (Teamster Health and Welfare Fund)
- William Fleming (Humana)
- Willie Chang (District Council 37)
- Yvonne Montez (Express Scripts, Inc.)

The documents forming a part of the source of McKesson's information regarding this defense include:

- Argus Health documents produced in *New England* matter
- CARP 01994-1995
- CARP-00059-90
- CARP-00091-189
- CARP-00274-275
- CARP-00291-292
- CARP-00317
- CMK-AWP-001888-2009

- D37 01428-01463
- D37 0673
- D37 0705-A-H
- D37 0711-A-D
- DC37 02384-02413
- DC37 04737-63
- DC37 06204-06205
- DC37 06222-06227
- DC37 06402
- DC37 06597-06598
- DC37 07595-DC37 07599
- DC37 07974-07977
- DC37 08419-08421
- DC37 08427
- DC37 08478-08488
- DC37 08555-08564
- DC37 08685-08690
- DC37 09800-09803
- DC37 09804-09810
- DC37 09837-09843
- ESI-277-00009391-9618
- ESI-414-00001752
- ESI-414-00001753-1754
- ESI-414-00001760
- ESI-414-00001761
- ESI-414-00001762-1763
- ESI-414-00001767

- ESI-414-00001794
- ESI-414-00001805-1806
- ESI-414-00001807-1808
- ESI-414-00001826
- ESI-414-00001828
- ESI-414-00001855
- ESI-414-00001856
- ESI-414-00001857-1858
- ESI-414-00001859-60
- ESI-414-00001861-1862
- ESI-414-00001864-1865
- ESI-414-00001866-1867
- ESI-414-00001868
- ESI-414-00001870-1876
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- ESI-414-00003689-3692
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- ESI-414-00003722-28
- ESI-414-00003729
- ESI-414-00003735-3737
- ESI-414-00003738-3739
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- ESI-414-00003775-3776
- ESI-414-00003777-3840
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- ESI-414-00003852-3857

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- ESI-414-00003890-3891
- ESI-414-00003892-3893
- ESI-414-00003894-3895
- ESI-414-00003896-3897
- ESI-414-00003901-3902
- ESI-414-00003903-3904
- ESI-414-00003908-3912
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- ESI-414-00003977-3979
- ESI-414-00003980-3981
- ESI-414-00003982-3983
- ESI-414-00003984-3985
- ESI-414-00003987-3988
- ESI-414-00003989-3990
- ESI-414-00003991-3992
- ESI-414-00003998-4002
- ESI-414-00004003-4004
- ESI-414-00004005-4006
- ESI-414-00004009-4015
- ESI-414-00004016-4018
- ESI-414-00004019-4021
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- ESI-414-00004091-4093
- ESI-414-00004094-4095
- ESI-414-00004096-4097
- ESI-414-00004098-4099
- ESI-414-00004101-4102
- ESI-414-00004103
- ESI-414-00004106-4107
- ESI-414-00004107-4120
- ESI-414-00004109-10
- ESI-414-00004125
- ESI-414-00004134-4138
- ESI-414-00004144-4147
- ESI-414-00004156-4157
- ESI-414-00004187-4191
- ESI-414-00004208
- ESI-414-00001731
- ESI-414-0001802
- ESI-414-0001827
- FDB/NEC 001634 - 001644
- HP/NEC 0988-1070

- KPMG 0305-312
- MCKAWP 0069715
- MHS A_0002575-661
- MHS A_0002703-39
- MHS A_0002740-43
- MHS A_0002744-45
- PFTH-FDB 002053-2054
- PFTHW-FDB 000645-000684
- PFTHW-FDB 001978-1985
- PFTHW-FDB 002042
- PFTHW-FDB 002044
- PIRELLI-FDB 0000161-88
- RB 00001-13341
- Segal/NEC 04782-04786
- Segal/NEC 04792-04829
- Segal-Carpenter 000245-256
- Segal-Carpenter 000293-299
- Segal-Carpenter 001623-24
- THWF 0001-34
- THWF 0147-152
- THWF 0181-83
- THWF 1849-1863
- THWF 2104-2107
- THWF 3170-3171

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Sixth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, by the doctrine of laches.”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the claims brought by or on behalf of the named plaintiffs or any absent member of the putative class are barred by the defense of laches because, among other reasons, they had knowledge of the increase in WAC to AWP markups and unreasonably delayed asserting claims based thereon. The evidence referenced in this response shows that the named plaintiffs were put on notice of increased WAC to AWP markups through claims data provided by their PBMs, published prescription drug pricing reports, and by analyses conducted by benefit consultants. Absent members of the putative class received notice of the increase in AWP markups from PBMs, wholesalers and drug manufacturers, and through prescription drug pricing information published by First DataBank. McKesson is not currently aware of any facts that would serve as the basis for this defense as against the named plaintiffs, other than as stated herein or described in the documents referenced below.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could

potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- A Brancati (Christiana Care)
- Alex Krikorian (Express Scripts, Inc.)
- Allison Cavanaugh (Express Scripts, Inc.)
- Amy Carlson (Express Scripts, Inc.)
- Andrew Avgoulas (Express Scripts, Inc.)
- Andrew Shim (Express Scripts, Inc.)
- Andy Parker (Express Scripts, Inc.)
- Angela Kilgore (Express Scripts, Inc.)
- Angela Shank (Express Scripts, Inc.)
- Anne Pena (Express Scripts, Inc.)
- Arnie Zopfi (Express Scripts, Inc.)
- Barry Rosenthal (Express Scripts, Inc.)
- Basem Shebli (NHP)
- Becky Kloos (Express Scripts, Inc.)
- Bernadette Eichelberger (Express Scripts, Inc.)
- Beth Wingate (Express Scripts, Inc.)
- Bill Kiefer (Express Scripts, Inc.)
- Bjorn Thommesen (Express Scripts, Inc.)
- Bob James (McKesson)
- Brad Cummings (Cascade Comprehensive Care)
- Brad Maas (Express Scripts, Inc.)
- Brenda Sabistina (Keller)
- Bruce Momess (Express Scripts, Inc.)
- Carmen Fontanez (Express Scripts, Inc.)

- Carol Sidwell (John Deere)
- Caroline Arseth (Express Scripts, Inc.)
- Carrie Elizondo (Express Scripts, Inc.)
- Carrie Goldberg (Express Scripts, Inc.)
- Carrie Mielke (Express Scripts, Inc.)
- Cathy McDougale (Express Scripts, Inc.)
- Chad Franz (Express Scripts, Inc.)
- Charla Katz (Express Scripts, Inc.)
- Cheryl McAndrew (MDNY Healthcare)
- Cheryl Skoglund (Express Scripts, Inc.)
- Chris Robbins (MDNY Healthcare)
- Christina Macinski (Express Scripts, Inc.)
- Christine Konieczny (Express Scripts, Inc.)
- Christopher Antonio (Express Scripts, Inc.)
- Chuck Kneese (Express Scripts, Inc.)
- Cindy Solberg (Express Scripts, Inc.)
- Colleen Castleman (Express Scripts, Inc.)
- Craig Bogner
- Craig Reno (Express Scripts, Inc.)
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- David Gretsche (Express Scripts, Inc.)

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- Dawn Burton (Express Scripts, Inc.)
- Dawn Vignovich (Express Scripts, Inc.)
- Dawn Winget (Express Scripts, Inc.)
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- Debra James (Express Scripts, Inc.)
- Dolores Olmos (Express Scripts, Inc.)
- Don Nickels (Express Scripts, Inc.)
- Donna Larsen (Express Scripts, Inc.)
- Dr. Deborah Ratliff (Healthcare, Inc.)
- Dr. Rome Walker (Caralion)
- Ed Keating
- Edwin Hedblom
- Elizabeth Hendler (Express Scripts, Inc.)
- Eric Cannon (SelectHealth)
- Eric Tvedt (Express Scripts, Inc.)
- Erik Walter (Express Scripts, Inc.)
- Erin Conley (Express Scripts, Inc.)
- Everette Neville (Express Scripts, Inc.)
- Frank Koronkiewicz (Blue Cross of Northeastern Pennsylvania)
- Fred Teitelbaum (Express Scripts, Inc.)
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- Gary Schramek (Blue Cross Blue Shield of Massachusetts)

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- Jim Peterson (Express Scripts, Inc.)
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- John Lynn (Express Scripts, Inc.)
- Jon Keeley
- Jon Warren (Express Scripts, Inc.)
- Judy Martineau (Express Scripts, Inc.)
- Judy Myers (PHP Inc.)
- Julayna Meyer (Express Scripts, Inc.)
- Julia Steen (Partners Health)
- Julie Lynch (Express Scripts, Inc.)
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- Julie McLaughlin (Express Scripts, Inc.)

- Julie O'Brien (Express Scripts, Inc.)
- Julius Ianniello (Express Scripts, Inc.)
- K Bates (Christiana Care)
- Karen Abe (Express Scripts, Inc.)
- Karen Oscarson (Express Scripts, Inc.)
- Karen Rodgers (Express Scripts, Inc.)
- Karen Ruh (Broward County)
- Karen Strait (Express Scripts, Inc.)
- Kari Tvedt (Express Scripts, Inc.)
- Kathleen Suel (Express Scripts, Inc.)
- Kathy Ferrell (Express Scripts, Inc.)
- Kathy McHugh (Express Scripts, Inc.)
- Kathy Stoner
- Kathy Stults (Express Scripts, Inc.)
- Kathy Warner (Evergreen Health Plan)
- Patricia Kay Morgan (First DataBank)
- Keith Trettin
- Kelli Hughes (Express Scripts, Inc.)
- Kelly Rhodus (Express Scripts, Inc.)
- Kelly Shultz (Express Scripts, Inc.)
- Ken Goldberg (Express Scripts, Inc.)
- Ken Waytashek (Express Scripts, Inc.)
- Kent Olson (Express Scripts, Inc.)
- Kent Wuflestad (Express Scripts, Inc.)
- Kerry Waldo (Express Scripts, Inc.)
- Kevin Baltrusch (Express Scripts, Inc.)
- Kim Korte (Express Scripts, Inc.)

- Kim Olson (Blue Cross Blue Shield Massachusetts)
- Kim Staloch (Express Scripts, Inc.)
- Kris Nicklaus (Community Health Plan of Washington?)
- Kristine Carpenter (Express Scripts, Inc.)
- Lana Nguyen (Express Scripts, Inc.)
- Larry Keller (Ventura County Health Care Plan)
- Laurie Johnson (Express Scripts, Inc.)
- Laurie Voss (Express Scripts, Inc.)
- Leanne Howard (Express Scripts, Inc.)
- Lesley Hill (Express Scripts, Inc.)
- Linda Chapeau (Preferred One)
- Linda Davis (Express Scripts, Inc.)
- Linda Koppin (Express Scripts, Inc.)
- Linda Rutledge (Wellpoint)
- Linda Vetter (Express Scripts, Inc.)
- Lisa Christy (Express Scripts, Inc.)
- Lisa Passino (Express Scripts, Inc.)
- Lisa Thompson (Express Scripts, Inc.)
- Lita Catapang (Ventura County Health Care Plan)
- Lori Barnes (Express Scripts, Inc.)
- Lynn S (Schaller Anderson)
- Lynn S (Schaller Anderson)
- M. Carlton (McKinley Insurance)
- Mara Evenson (Express Scripts, Inc.)
- Marc Palmer (Express Scripts, Inc.)
- Marian Sutton (Express Scripts, Inc.)
- Marianne Scriven Iexpress Scripts, Inc.)

- Marie Moore (Express Scripts, Inc.)
- Marjorie Wittenborg (Express Scripts, Inc.)
- Mark Dowling (Express Scripts, Inc.)
- Mark Hughes (Express Scripts, Inc.)
- Mark Schwartz (Express Scripts, Inc.)
- Mark Stevens (Blue Cross Blue Shield Massachusetts)
- Mary Coyne (Express Scripts, Inc.)
- Mary Ellen Mullholand (Express Scripts, Inc.)
- Mary Ptacek (Express Scripts, Inc.)
- Mary Stemler (Express Scripts, Inc.)
- Marybeth Stemler (Express Scripts, Inc.)
- Matt Dietrich (Express Scripts, Inc.)
- Matthew Connell (Blue Cross Blue Shield Massachusetts)
- Matthew Ordner (Express Scripts, Inc.)
- Maureen Gauer (Express Scripts, Inc.)
- Megan Vorgert (Express Scripts, Inc.)
- Melissa Halverson (Express Scripts, Inc.)
- Melissa Torres (McKesson.)
- Michael Ackerman (CarePartners)
- Michael Dembrosky (Express Scripts, Inc.)
- Michael Hamacher
- Michael Hornquist (Express Scripts, Inc.)
- Mike Anderson
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Myrna Harvey (Western California)
- Nancy Christman
- Nancy Eid (Express Scripts, Inc.)

- Nancy Gilbride (Express Scripts, Inc.)
- Pam Earnhardt (Express Scripts, Inc.)
- Pam Ford (Express Scripts, Inc.)
- Pamela Roberts (Express Scripts, Inc.)
- Pat Jensen (Express Scripts, Inc.)
- Patrick Marks (Express Scripts, Inc.)
- Patty Beeler
- Paul Kociemba
- Paul Marcus (Express Scripts, Inc.)
- Paul Monson (Express Scripts, Inc.)
- Phyllis Amadi (Express Scripts, Inc.)
- Rachelle Johnston (Express Scripts, Inc.)
- Raj Kabali (Keystone Health Plan Central)
- Raulo Frear (Express Scripts, Inc.)
- Ray Bowman (Express Scripts, Inc.)
- Raymond Brown (Express Scripts, Inc.)
- Renee Callery (Express Scripts, Inc.)
- Renee Shimley (Express Scripts, Inc.)
- Rhonda Rees (Express Scripts, Inc.)
- Richard Ashby (Ventura County Health Care Plan)
- Richard Johnson
- Rob Noel (Express Scripts, Inc.)
- Rob Scott (Express Scripts, Inc.)
- Robert Hull (Express Scripts, Inc.)
- Robert Jaramillo (AH Plans)
- Robin Kling (Express Scripts, Inc.)
- Ron Perrone (MDNY Healthcare)

- Ronald Fox (Express Scripts, Inc.)
- Roy Arnold (Blue Cross Blue Shield Montana)
- Ryan Soderstrom (Express Scripts, Inc.)
- Samia Nasr (BJC)
- Sandi Deckinger
- Sandy Barklage (Express Scripts, Inc.)
- Sandy Ferguson (Express Scripts, Inc.)
- Sarah Stoces (Express Scripts, Inc.)
- Scott McCutcheon (Express Scripts, Inc.)
- Scott Vogel (Express Scripts, Inc.)
- Shahana Ahmed (Express Scripts, Inc.)
- Shannon Kampa (Express Scripts, Inc.)
- Sharon Edmunds (Express Scripts, Inc.)
- Sharon Reed (Express Scripts, Inc.)
- Sheila Bleeke (Express Scripts, Inc.)
- Shelly Laitala (Express Scripts, Inc.)
- Sheri Scheerer (Express Scripts, Inc.)
- Sherry Marg (Express Scripts, Inc.)
- Sonja Larson (Express Scripts, Inc.)
- Stacie Blake (Express Scripts, Inc.)
- Stacy Gray (Express Scripts, Inc.)
- Stephanie Anderson (Express Scripts, Inc.)
- Stephanie Kohnen (Express Scripts, Inc.)
- Stephanie Schroeder (Express Scripts, Inc.)
- Steven Franklin (Express Scripts, Inc.)
- Steven Webb (Express Scripts, Inc.)
- Stuart Bascomb (Express Scripts, Inc.)

- Sue Crawford (Express Scripts, Inc.)
- Sue Fermstad (Express Scripts, Inc.)
- Sue Ricciardi (Christiana Care)
- Sue Sommer (Express Scripts, Inc.);
- Susan Feliciano (PHP Inc.)
- Susan Hollingsworth (Express Scripts, Inc.)
- Susan Murphy (Express Scripts, Inc.)
- Susan Ryan (Express Scripts, Inc.)
- Susan Slaughter (Express Scripts, Inc.)
- Suzanne Hilbert
- Tamara Chapman (Express Scripts, Inc.)
- Terence Miller (Express Scripts, Inc.)
- Teresa Foegelle (Express Scripts, Inc.)
- Teresa Stewart (Express Scripts, Inc.)
- Terri Lindquist (Express Scripts, Inc.)
- Terry Thomas (Express Scripts, Inc.)
- Tim King (Express Scripts, Inc.)
- Tim Rackovan (Express Scripts, Inc.)
- Tim Williams (Express Scripts, Inc.)
- Tina Sprau (Express Scripts, Inc.)
- Tina Sturguess (Express Scripts, Inc.)
- Tina Wong (Blue Cross Blue Shield Montana)
- Tod Dennis (Express Scripts, Inc.)
- Tom Aufiero (Express Scripts, Inc.)
- Tom Giles (Express Scripts, Inc.)
- Tom Issacs (Express Scripts, Inc.)
- Tom Rechtein (Express Scripts, Inc.)

- Tony Kalal (Express Scripts, Inc.)
- Traci Orvis (Express Scripts, Inc.)
- Tracy Leine (Express Scripts, Inc.)
- Tricia Hunter (Express Scripts, Inc.)
- Tricia Pool (Express Scripts, Inc.)
- Valerie Chase (Express Scripts, Inc.)
- Wendy Hemmen (Express Scripts, Inc.)
- William Fleming (Humana)
- Yvonne Montez (Express Scripts, Inc.)

The documents forming a part of the source of McKesson's information regarding this defense include:

- Argus Health documents produced in *New England* matter
- ESI-414-00001752
- ESI-414-00001753-1754
- ESI-414-00001760
- ESI-414-00001761
- ESI-414-00001762-1763
- ESI-414-00001767
- ESI-414-00001794
- ESI-414-00001805-1806
- ESI-414-00001807-1808
- ESI-414-00001826
- ESI-414-00001828
- ESI-414-00001855
- ESI-414-00001856
- ESI-414-00001857-1858

- ESI-414-00001859-186060
- ESI-414-00001861-1862
- ESI-414-00001864-65
- ESI-414-00001866-1867
- ESI-414-00001868
- ESI-414-00001870-1876
- ESI-414-00001877-1879
- ESI-414-00001880
- ESI-414-00001881
- ESI-414-00003657-3661
- ESI-414-00003669
- ESI-414-00003671-3676
- ESI-414-00003677-3678
- ESI-414-00003679-3680
- ESI-414-00003683-3684
- ESI-414-00003685-3686
- ESI-414-00003687-3688
- ESI-414-00003689-3692
- ESI-414-00003695-3696
- ESI-414-00003699-3704
- ESI-414-00003705-3706
- ESI-414-00003707-3715
- ESI-414-00003716-3728
- ESI-414-00003722-28
- ESI-414-00003729
- ESI-414-00003735-3737
- ESI-414-00003738-3739

- ESI-414-00003739
- ESI-414-00003741-3743
- ESI-414-00003744-3745
- ESI-414-00003746-3747
- ESI-414-00003748-3749
- ESI-414-00003750-3751
- ESI-414-00003752-3753
- ESI-414-00003754-3757
- ESI-414-00003758-59
- ESI-414-00003760
- ESI-414-00003761-3765
- ESI-414-00003766-3767
- ESI-414-00003775-3776
- ESI-414-00003777-3840
- ESI-414-00003780-84
- ESI-414-00003842
- ESI-414-00003844
- ESI-414-00003849-3851
- ESI-414-00003852-3857
- ESI-414-00003858-60
- ESI-414-00003865-3866
- ESI-414-00003867-3868
- ESI-414-00003869-3870
- ESI-414-00003882-3884
- ESI-414-00003885-3886
- ESI-414-00003887-3889
- ESI-414-00003890-3891

- ESI-414-00003892-3893
- ESI-414-00003894-3895
- ESI-414-00003896-3897
- ESI-414-00003901-3902
- ESI-414-00003903-3904
- ESI-414-00003908-3912
- ESI-414-00003913-3917
- ESI-414-00003918-3919
- ESI-414-00003923-3924
- ESI-414-00003925-3926
- ESI-414-00003929-3930
- ESI-414-00003941-3942
- ESI-414-00003943-3949
- ESI-414-00003954
- ESI-414-00003955-3956
- ESI-414-00003957
- ESI-414-00003958-3962
- ESI-414-00003963-3964
- ESI-414-00003965-3966
- ESI-414-00003967-3968
- ESI-414-00003969-3971
- ESI-414-00003972-3973
- ESI-414-00003974-3976
- ESI-414-00003977-3979
- ESI-414-00003980-3981
- ESI-414-00003982-3983
- ESI-414-00003984-3985

- ESI-414-00003987-3988
- ESI-414-00003989-3990
- ESI-414-00003991-3992
- ESI-414-00003998-4002
- ESI-414-00004003-4004
- ESI-414-00004005-4006
- ESI-414-00004009-4015
- ESI-414-00004016-4018
- ESI-414-00004019-4021
- ESI-414-00004022-4024
- ESI-414-00004025-4026
- ESI-414-00004027-4028
- ESI-414-00004035-4037
- ESI-414-00004038
- ESI-414-00004039-4040
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- ESI-414-00004043-4044
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- ESI-414-00004057-4059
- ESI-414-00004060-4061
- ESI-414-00004062
- ESI-414-00004066-4067
- ESI-414-00004091-4093

- ESI-414-00004094-4095
- ESI-414-00004096-4097
- ESI-414-00004098-4099
- ESI-414-00004101-4102
- ESI-414-00004103
- ESI-414-00004106-4107
- ESI-414-00004107-4120
- ESI-414-00004109-10
- ESI-414-00004125
- ESI-414-00004134-4138
- ESI-414-00004144-4147
- ESI-414-00004156-4157
- ESI-414-00004187-4191
- ESI-414-00004208
- ESI-414-0001802
- ESI-414-0001827
- FDB/NEC 001633 - 001644
- KPMG 0305-312
- MCKAWP 0069715
- RB 00001-13341

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Seventh Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, by the applicable statutes of limitations, including, without limitation, the four-year statute of limitations applicable to RICO claims as recognized by the Supreme Court in *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143 (1987); the four-year statute of limitations applicable to claims under California’s Unfair Competition Law as codified in Business and Professions Code § 17208; the three-year statute of limitations applicable to claims under California’s Consumer Legal Remedies Act; and the relevant statute of limitations applicable to civil conspiracy actions established in the applicable statutes, including the three-year statute of limitations for civil conspiracy claims under Massachusetts law as codified in Massachusetts General Laws Chapter 260 § 2A (2005).”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the claims brought by or on behalf of the named plaintiffs or any absent member of the putative classes, including the consumer class, are time-barred in whole or in part because they had actual or constructive notice of the increase in WAC to AWP markups before this action was filed because, among other reasons: (1) First DataBank was publishing information on a daily basis that showed changes in WAC and AWP for prescription drugs; (2) payors were notified of the increase in WAC to AWP markups by their pharmacy benefit managers or others involved in the reimbursement system for self-administered prescription drugs; and/or (3) industry publications and consultants noted that AWP for some drugs had increased by larger than usual percentages. McKesson is not currently aware of any facts that would serve as the basis for this defense as against the named plaintiffs with respect to their claim under RICO.

With respect to the other claims alleged in the Complaint, the evidence referenced in this response shows that the named plaintiffs had actual notice (and absent members of any class that may be certified had constructive notice) of the basis for their claims no later than the date they filed this action. Some absent class members likely had actual or constructive notice of the basis for their claims before this action was filed. The named plaintiffs' and any absent class members' claims are accordingly barred to the extent they seek to recover under state law for payments or reimbursements made prior to the earliest date before the filing of this action that would be permitted by applicable state law, i.e., on or before June 2, 2002 under the consumer protection laws of California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Kansas, Maryland, Mississippi, Missouri, Nevada, New Hampshire, New York, Oklahoma, South Carolina, and Wisconsin, to the extent the Court determines them to be applicable; on or before June 2, 2002 under the civil conspiracy laws of Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, and Idaho, to the extent the Court determines them to be applicable; on or before June 2, 2003 under the consumer protection laws of Alaska, Georgia, Idaho, Indiana, Montana, Ohio, South Dakota, Texas, Utah, Virginia, and West Virginia, to the extent the Court determines them to be applicable; on or before June 2, 2003 under the civil conspiracy laws of Alabama, Alaska, Kansas, Montana, Oklahoma, Oregon, Texas, and West Virginia, to the extent the Court determines them to be applicable; on or before June 2, 2004 under the consumer protection laws of Alabama, Arizona, Kentucky, Louisiana, Oregon, Tennessee, and Wyoming, to the extent the Court determines them to be applicable; and on or before June 2, 2004 under the civil conspiracy laws of Kentucky, Louisiana, Puerto Rico, and Tennessee, to the extent the Court finds them to be applicable. Additional facts that support the application of this defense to plaintiffs' claims under state law, as well as to the claims of absent class members, are described in the documents referenced below.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could

potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- A. Brancati (Christiana Care)
- Alex Krikorian (Express Scripts, Inc.)
- Allison Cavanaugh (Express Scripts, Inc.)
- Amy Carlson (Express Scripts, Inc.)
- Andrew Avgoulas (Express Scripts, Inc.)
- Andrew Shim (Express Scripts, Inc.)
- Andy Parker (Express Scripts, Inc.)
- Angela Kilgore (Express Scripts, Inc.)
- Angela Shank (Express Scripts, Inc.)
- Anne Pena (Express Scripts, Inc.)
- Arnie Zopfi (Express Scripts, Inc.)
- Barry Rosenthal (Express Scripts, Inc.)
- Basem Shebli (NHP)
- Becky Kloos (Express Scripts, Inc.)
- Bernadette Eichelberger (Express Scripts, Inc.)
- Beth Wingate (Express Scripts, Inc.)
- Bill Kiefer (Express Scripts, Inc.)
- Bjorn Thommesen (Express Scripts, Inc.)
- Bob James (McKesson)
- Brad Cummings (Cascade Comprehensive Care)
- Brad Maas (Express Scripts, Inc.)
- Brenda Sabistina (Keller)
- Bruce Momess (Express Scripts, Inc.)

- Carmen Fontanez (Express Scripts, Inc.)
- Carol Sidwell (John Deere)
- Caroline Arseth (Express Scripts, Inc.)
- Carrie Elizondo (Express Scripts, Inc.)
- Carrie Goldberg (Express Scripts, Inc.)
- Carrie Mielke (Express Scripts, Inc.)
- Cathy McDougale (Express Scripts, Inc.)
- Chad Franz (Express Scripts, Inc.)
- Charla Katz (Express Scripts, Inc.)
- Cheryl McAndrew (MDNY Healthcare)
- Cheryl Skoglund (Express Scripts, Inc.)
- Chris Macinski (Express Scripts, Inc.)
- Chris Robbins (MDNY Healthcare)
- Christine Konieczny (Express Scripts, Inc.)
- Christopher Antonio (Express Scripts, Inc.)
- Chuck Kneese (Express Scripts, Inc.)
- Cindy Solberg (Express Scripts, Inc.)
- Colleen Castleman (Express Scripts, Inc.)
- Craig Bogner
- Craig Reno (Express Scripts, Inc.)
- Crystalin Moyer (Express Scripts, Inc.)
- Cynthia Olivarez (Express Scripts, Inc.)
- Dale Bultemeier (Physicians' Health Plan)
- Dan Mandoli (Express Scripts, Inc.)
- Dan McKendry (Neighborhood Health Partnership)
- Darren Siversten (Sierra Health Services)
- David Cartwright (Express Scripts, Inc.)

- David Gretsches (Express Scripts, Inc.)
- David Joyner (AdvancePCS)
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- Dolores Olmos (Express Scripts, Inc.)
- Don Nickels (Express Scripts, Inc.)
- Donna Larsen (Express Scripts, Inc.)
- Dr. Deborah Ratliff (Healthcare, Inc.)
- Dr. Rome Walker (Caralio)
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- Edwin Hedblom
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- Eric Cannon (SelectHealth)
- Eric Tvedt (Express Scripts, Inc.)
- Erik Walter (Express Scripts, Inc.)
- Erin Conley (Express Scripts, Inc.)
- Everette Neville (Express Scripts, Inc.)
- Frank Koronkiewicz (Blue Cross of Northeastern Pennsylvania)
- Fred Teitelbaum (Express Scripts, Inc.)
- Gail Quam (Express Scripts, Inc.)
- Gary Schmidt (Express Scripts, Inc.)
- Gary Schramek (Blue Cross Blue Shield of Massachusetts)

- Gennie Figiel (Express Scripts, Inc.)
- Geri DeClerck (Express Scripts, Inc.)
- Gerry Sander (Express Scripts, Inc.)
- Ginny Kula (Fallon)
- Harry Goldenberg (PHP Companies)
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- Holly Anderson (Express Scripts, Inc.)
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- Holz Mike (Express Scripts, Inc.)
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- Janice Grochal (Express Scripts, Inc.)
- Jannel McCullough (Express Scripts, Inc.)
- Jason Dohm (Express Scripts, Inc.)
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- Jean Brooks (Express Scripts, Inc.)
- Jean Judd (Express Scripts, Inc.)
- Jean Stannard (Express Scripts, Inc.)
- Jeff Casberg (Express Scripts, Inc.)
- Jeff Martin

- Jeffrey Legg (Express Scripts, Inc.)
- Jeffrey Siebers (Express Scripts, Inc.)
- Jennifer Athmann (Express Scripts, Inc.)
- Jennifer Chase (Express Scripts, Inc.)
- Jennifer Goggin (Express Scripts, Inc.)
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- Julie O'Brien (Express Scripts, Inc.)
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- Karen Oscarson (Express Scripts, Inc.)
- Karen Rodgers (Express Scripts, Inc.)
- Karen Ruh (Broward County)
- Karen Strait (Express Scripts, Inc.)
- Kari Tvedt (Express Scripts, Inc.)
- Kathleen Suel (Express Scripts, Inc.)
- Kathy Ferrell (Express Scripts, Inc.)
- Kathy McHugh (Express Scripts, Inc.)
- Kathy Stoner
- Kathy Stults (Express Scripts, Inc.)
- Kathy Warner (Evergreen Health Plan)
- Patricia Kay Morgan (First DataBank)
- Keith Trettin
- Kelli Hughes (Express Scripts, Inc.)
- Kelly Rhodus (Express Scripts, Inc.)
- Kelly Shultz (Express Scripts, Inc.)
- Ken Goldberg (Express Scripts, Inc.)
- Ken Waytashek (Express Scripts, Inc.)
- Kent Olson (Express Scripts, Inc.)
- Kent Wuflestad (Express Scripts, Inc.)
- Kerry Waldo (Express Scripts, Inc.)
- Kevin Baltrusch (Express Scripts, Inc.)
- Kim Becker (Express Scripts, Inc.)

- Kim Korte (Express Scripts, Inc.)
- Kim Olson (Blue Cross Blue Shield Massachusetts)
- Kim Staloch (Express Scripts, Inc.)
- Kris Nicklaus (Community Health Plan of Washington?)
- Kristine Carpenter (Express Scripts, Inc.)
- Lana Nguyen (Express Scripts, Inc.)
- Larry Keller (Ventura County Health Care Plan)
- Laurie Johnson (Express Scripts, Inc.)
- Laurie Voss (Express Scripts, Inc.)
- Leanne Howard (Express Scripts, Inc.)
- Lesley Hill (Express Scripts, Inc.)
- Linda Chapeau (Preferred One)
- Linda Davis (Express Scripts, Inc.)
- Linda Koppin (Express Scripts, Inc.)
- Linda Rutledge (Wellpoint)
- Linda Vetter (Express Scripts, Inc.)
- Lisa Christy (Express Scripts, Inc.)
- Lisa Passino (Express Scripts, Inc.)
- Lisa Thompson (Express Scripts, Inc.)
- Lita Catapang (Ventura County Health Care Plan)
- Lori Barnes (Express Scripts, Inc.)
- Lynn S (Schaller Anderson)
- Lynn Thomas
- M. Carlton (McKinley Insurance)
- Mara Evenson (Express Scripts, Inc.)
- Marc Palmer (Express Scripts, Inc.)
- Marian Sutton (Express Scripts, Inc.)

- Marianne Scriven (Express Scripts, Inc.)
- Marie Moore (Express Scripts, Inc.)
- Marjorie Wittenborg (Express Scripts, Inc.)
- Mark Dowling (Express Scripts, Inc.)
- Mark Hughes (Express Scripts, Inc.)
- Mark Schwartz (Express Scripts, Inc.)
- Mark Stevens (Blue Cross Blue Shield Massachusetts)
- Mary Coyne (Express Scripts, Inc.)
- Mary Ellen Mullholand (Express Scripts, Inc.)
- Mary Ptacek (Express Scripts, Inc.)
- Mary Stemler (Express Scripts, Inc.)
- Marybeth Stemler (Express Scripts, Inc.)
- Matt Dietrich (Express Scripts, Inc.)
- Matthew Connell (Blue Cross Blue Shield Massachusetts)
- Matthew Ordner (Express Scripts, Inc.)
- Maureen Gauer (Express Scripts, Inc.)
- Megan Vorgert (Express Scripts, Inc.)
- Melissa Halverson (Express Scripts, Inc.)
- Melisse Torres (Express Scripts, Inc.)
- Michael Ackerman (CarePartners)
- Michael Dembrosky (Express Scripts, Inc.)
- Michael Hamacher
- Michael Hornquist (Express Scripts, Inc.)
- Mike Anderson
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Myrna Harvey (Western California)
- Nancy Christman

- Nancy Eid (Express Scripts, Inc.)
- Nancy Gilbride (Express Scripts, Inc.)
- Pam Earnhardt (Express Scripts, Inc.)
- Pam Ford (Express Scripts, Inc.)
- Pamela Roberts (Express Scripts, Inc.)
- Pat Jensen (Express Scripts, Inc.)
- Patricia Kay Morgan (First DataBank)
- Patrick Marks (Express Scripts, Inc.)
- Patty Beeler
- Paul Kociemba
- Paul Marcus (Express Scripts, Inc.)
- Paul Monson (Express Scripts, Inc.)
- Phyllis Amadi (Express Scripts, Inc.)
- Rachelle Johnston (Express Scripts, Inc.)
- Raj Kabali (Keystone Health Plan Central)
- Raulo Frear (Express Scripts, Inc.)
- Raulo Frear (Express Scripts, Inc.)
- Ray Bowman (Express Scripts, Inc.)
- Raymond Brown (Express Scripts, Inc.)
- Renee Callery (Express Scripts, Inc.)
- Renee Shimley (Express Scripts, Inc.)
- Rhonda Rees (Express Scripts, Inc.)
- Richard Ashby (Ventura County Health Care Plan)
- Richard Johnson
- Rob Noel (Express Scripts, Inc.)
- Rob Scott (Express Scripts, Inc.)
- Robert Hull (Express Scripts, Inc.)

- Robert Jaramillo (AH Plans)
- Robin Kling (Express Scripts, Inc.)
- Ron Perrone (MDNY Healthcare)
- Ronald Fox (Express Scripts, Inc.)
- Roy Arnold (Blue Cross Blue Shield Montana)
- Ryan Soderstrom (Express Scripts, Inc.)
- Samia Nasr (BJC)
- Sandi Deckinger
- Sandy Barklage (Express Scripts, Inc.)
- Sandy Ferguson (Express Scripts, Inc.)
- Sarah Stoces (Express Scripts, Inc.)
- Scott McCutcheon (Express Scripts, Inc.)
- Scott Vogel (Express Scripts, Inc.)
- Shahana Ahmed (Express Scripts, Inc.)
- Shannon Kampa (Express Scripts, Inc.)
- Sharon Edmunds (Express Scripts, Inc.)
- Sharon Reed (Express Scripts, Inc.)
- Sheila Bleeke (Express Scripts, Inc.)
- Shelly Laitala (Express Scripts, Inc.)
- Sheri Scheerer (Express Scripts, Inc.)
- Sherry Marg (Express Scripts, Inc.)
- Sonja Larson (Express Scripts, Inc.)
- Stacie Blake (Express Scripts, Inc.)
- Stacy Gray (Express Scripts, Inc.)
- Staphanie Schroeder (Express Scripts, Inc.)
- Stephanie Anderson (Express Scripts, Inc.)
- Stephanie Kohnen (Express Scripts, Inc.)

- Stephanie Schroeder (Express Scripts, Inc.)
- Steven Franklin (Express Scripts, Inc.)
- Steven Webb (Express Scripts, Inc.)
- Stuart Bascomb (Express Scripts, Inc.)
- Sue Crawford (Express Scripts, Inc.)
- Sue Fermstad (Express Scripts, Inc.)
- Sue Ricciardi (Christiana Care)
- Sue Sommer (Express Scripts, Inc.);
- Susan Feliciano (PHP Inc.)
- Susan Hollingsworth (Express Scripts, Inc.)
- Susan Murphy (Express Scripts, Inc.)
- Susan Ryan (Express Scripts, Inc.)
- Susan Slaughter (Express Scripts, Inc.)
- Suzanne Hilbert
- Tamara Chapman (Express Scripts, Inc.)
- Terence Miller (Express Scripts, Inc.)
- Teresa Foegelle (Express Scripts, Inc.)
- Teresa Stewart (Express Scripts, Inc.)
- Terri Lindquist (Express Scripts, Inc.)
- Terry Thomas (Express Scripts, Inc.)
- Tim King (Express Scripts, Inc.)
- Tim Rackovan (Express Scripts, Inc.)
- Tim Williams (Express Scripts, Inc.)
- Tina Sprau (Express Scripts, Inc.)
- Tina Sturguess (Express Scripts, Inc.)
- Tina Wong (Blue Cross Blue Shield Montana)
- Tod Dennis (Express Scripts, Inc.)

- Tom Aufiero (Express Scripts, Inc.)
- Tom Giles (Express Scripts, Inc.)
- Tom Issacs (Express Scripts, Inc.)
- Tom Rechtein (Express Scripts, Inc.)
- Tony Kalal (Express Scripts, Inc.)
- Traci Orvis (Express Scripts, Inc.)
- Tracy Leine (Express Scripts, Inc.)
- Tricia Hunter (Express Scripts, Inc.)
- Tricia Pool (Express Scripts, Inc.)
- Valerie Chase (Express Scripts, Inc.)
- Wendy Hemmen (Express Scripts, Inc.)
- William Fleming (Humana)
- William Wright (First DataBank)
- Yvonne Montez (Express Scripts, Inc.)

The documents forming a part of the source of McKesson's information regarding this defense include:

- Argus Health documents produced in *New England* matter
- CMK-AWP 001795 - 001802
- CMK-NECarp 000487-603
- CMK-NECarp 00486
- D370001-0012
- D37-ESI001-003
- DC37 05541-53
- ESI-277-000012343-12509
- ESI-277-000012511-12606
- ESI-414-00001752

- ESI-414-00001753-1754
- ESI-414-00001760
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- ESI-414-00004101-4102
- ESI-414-00004103
- ESI-414-00004106-4107
- ESI-414-00004107-4120
- ESI-414-00004109-10
- ESI-414-00004125
- ESI-414-00004134-4138
- ESI-414-00004144-4147
- ESI-414-00004156-4157
- ESI-414-00004187-4191
- ESI-414-00004208

- ESI-414-0001802
- ESI-414-0001827
- FDB/NEC 001634 - 001644
- JD/NEC01574-1694
- JD/NEC02423-02478
- JD/NEC02423-02478
- JD/NEC02484-02579
- KPMG 0305-312
- MCKAWP 0069715
- MEDCO 000187-278
- PFTHW 0156
- PFTHW 2459
- PFTHW 2478
- PFTHW-FDB 002112-002135
- PFTWH 2479
- RB 00001-13341
- THWF 4808-4809

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Eighth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, because Plaintiffs have failed to mitigate their damages, if any.”

Basis

While denying that plaintiffs have suffered damages in any amount for the claims alleged in the Second Amended Class Action Complaint, McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the named plaintiffs or any absent member of the putative class had notice of the increase in WAC to AWP markups and failed to avail themselves of available mechanisms, such as negotiating better pricing from PBMs or modifying the terms of their prescription drug benefit plans, to minimize or eliminate the economic impact of the increases. The evidence referenced in this response shows that the named plaintiffs and absent member of the putative class had notice of the increase in WAC to AWP markups before this action was filed because, among other reasons: (1) First DataBank was publishing information on a daily basis that showed changes in WAC and AWP for prescription drugs; (2) payors were notified of the increase in WAC to AWP markups by their pharmacy benefit managers or others involved in the reimbursement system for self-administered prescription drugs; and/or (3) industry publications and consultants noted that AWP for some drugs had increased by larger than usual percentages.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- Aaron King (Advance PCS)
- Allen Maltz (Blue Cross Blue Shield Massachusetts)
- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)

- Audrey Browne (District Council 37)
- Barbara Edmonds (District Council 37)
- C. Chin-Marshall (District Council 37)
- Chin-Marshall (District Council 37)
- Christina Macinski (Express Scripts, Inc.)
- Cynthia Chin-Marshall (District Council 37)
- Dan Mandoli (Express Scripts, Inc.)
- David Bergeron (Segal)
- David Brenner (Segal)
- David Joyner (AdvancePCS)
- Deborah Young (Advance PCS)
- Diana Clark (UEBT)
- E. Walker (District Council 37)
- Edward Ignaczak (Express Scripts, Inc.)
- Edward Kaplan (Segal)
- Ellen Perlman (Express Scripts, Inc.)
- Eric Cannon (SelectHealth)
- Ernie Walker (District Council 37)
- Francis Curtis (District Council 37)
- G. Tomanelli (District Council 37)
- Gary Dean (District Council 37)
- Gretchen Kalvelage (Segal)
- Harry Dow (Segal)
- Henry Salvadori (Segal)
- Jacqueline Posniack (Segal)
- James Buckley (New England Carpenters Health Benefits Fund)
- Joel Grodman (General Prescription Programs Inc.)

- John Cotton (Segal)
- John Rasulo (National Prescription Administrators)
- Judith Maurath (APAIE 618 Health)
- Laura Albergo (District Council 37)
- Lillian Roberts (District Council 37)
- Marilyn Gordon (ESI)
- Matthew Gibbs (Hewitt)
- Mickey Toledo (District Council 37)
- Nancy Treglia-Saiduc (Express Scripts, Inc.)
- Oliver Gray (District Council 37)
- Onita Wade (District Council 37)
- Pat Briding
- Pat LaGuardia (District Council 37)
- Richard Koehler (District Council 37)
- Robert Hasiak (District Council 37)
- Robert Hirschhorn (Segal)
- Ron Tyson (Express Scripts, Inc.)
- Rosaria Esperon (District Council 37)
- Rosemarie Mongillo (Advance PCS)
- Roslyn Yasser (District Council 37)
- Sara Sullivan (Advance PCS)
- Steve Burns (Postscript LLC)
- Steve Issacs (District Council 37)
- Stuart Bascomb (Express Scripts, Inc.)
- Susan Hayes (Pharmacy Outcomes Specialists)
- T. Whittaker (District Council 37)
- Thomas Gilson (Medco)

- Thomas Whittaker (Segal)
- Tina Wong (Blue Cross Blue Shield Montana)
- Vinny Graziano (Segal)
- W. Chang (District Council 37)
- William Sullivan (Segal)
- William Einhorn (Teamster Health and Welfare Fund)
- William Fleming (Humana)
- Willie Chang (District Council 37)
- Yadira Grullon (Segal)

The documents forming a part of the source of McKesson's information regarding this defense include:

- Argus Health documents produced in *New England* matter
- CARP 01994-1995
- CARP 02148-2190
- CARP 02211
- CARP-00059-90
- CARP-00091-189
- CARP-00274-275
- CARP-00291-292
- CARP-00317
- CMK-AWP 001795 - 001802
- CMK-AWP 001795 - 001802
- CMK-AWP-001888-2009
- CMK-NECarp 000487-603
- CMK-NECarp 00486
- D37 01428-01463

- D37 01563-1566
- D37 01803-01809
- D37 0673
- D37 0705-A-H
- D37 0711-A-D
- D37 0878-0882
- D37 1909-01911
- D370001-0012
- D37-ESI001-003
- DC37 02384-02413
- DC37 04108-04112
- DC37 04281-04284
- DC37 04737-04763
- DC37 04737-63
- DC37 05541-05553
- DC37 05541-53
- DC37 05541-53
- DC37 06204-06205
- DC37 06222-06227
- DC37 06402
- DC37 06597-06598
- DC37 06952-06972
- DC37 06973-06990
- DC37 07482-07507
- DC37 07595-DC37 07599
- DC37 07754-07760
- DC37 07974-07977

- DC37 08056-08059
- DC37 08419-08421
- DC37 08427
- DC37 08478-08488
- DC37 08555-08564
- DC37 08685-08690
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- DC37 09345-09350
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- DC37 09837-09843
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- ESI-414-00003991-3992
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- ESI-414-00004109-10
- ESI-414-00004125
- ESI-414-00004134-4138
- ESI-414-00004144-4147
- ESI-414-00004156-4157
- ESI-414-00004187-4191
- ESI-414-00004208
- ESI-414-0001802
- ESI-414-0001827
- Esperon Exhibit 57
- FDB/NEC 001634 - 001644
- HP/NEC 0988-1070
- JD/NEC01574-1694
- JD/NEC01574-1694
- JD/NEC02423-02478

- JD/NEC02423-02478
- JD/NEC02423-02478
- JD/NEC02423-02478
- JD/NEC02484-02579
- JD/NEC02484-02579
- KPMG 0305-0312
- KPMG 0305-312
- MCKAWP 0069715
- MEDCO 000187-278
- MEDCO 000187-278
- MHS A_0002575-661
- MHS A_0002703-39
- MHS A_0002740-43
- MHS A_0002744-45
- PFTH-FDB 002053-2054
- PFTHW 0156
- PFTHW 2459
- PFTHW 2478
- PFTHW-FDB 000645-000684
- PFTHW-FDB 001978-1985
- PFTHW-FDB 002042
- PFTHW-FDB 002044
- PFTHW-FDB 002112-002135
- PFTWH 2479
- PIRELLI-FDB 0000161-88
- RB 00001-13341
- Segal/NEC 04782-04786

- Segal/NEC 04792-04829
- Segal/NEC 05012- 05026
- Segal/NEC 05284-05330
- Segal/NEC 06581-82
- Segal/NEC 06584-06587
- Segal/NEC 12583-1260
- Segal/NEC 12603-12644
- Segal/NEC 12645-12695
- Segal/NEC 12742-12784
- Segal-Carpenter 000245-256
- Segal-Carpenter 000293-299
- Segal-Carpenter 001623-24
- Segal-Carpenter-000762-778
- THWF 0001 - 0034,
- THWF 0147-152
- THWF 0181-83
- THWF 1849-1863
- TWHF 2104-2107
- THWF 3170-3171
- THWF 4808-4809

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Ninth Affirmative Defense: “McKesson’s statements or actions were not the proximate cause or cause in fact of any injury to or alleged loss by Plaintiffs or the putative class.”

Basis

While denying that plaintiffs suffered damages in any amount for the claims alleged in the Second Amended Complaint, McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the named plaintiffs or any absent member of the putative class did not sustain any injury or loss as a result of McKesson’s statements or actions because, among other reasons, AWP’s were derived and published by First DataBank, Medispan and Redbook based on their own methodologies, including surveys that they represented they conducted of pharmaceutical drug wholesalers and on information from manufacturers. The evidence referenced in this response shows that AWP’s were not set by McKesson; McKesson established its own suggested sell price, which it reported to FDB in response to what it understood was a survey process. Throughout the alleged class period, FDB represented to McKesson, consistent with FDB’s public statements, that FDB’s AWP’s were derived by it from a survey of multiple wholesalers. Plaintiffs’ own Complaint allegations concede that multiple wholesalers continued to provide FDB with pricing information through most of the Class Period. FDB has affirmed in the MDL that it did not tell McKesson that McKesson was the only wholesaler at times being surveyed by FDB.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could

potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- Agnes Reitano (Defense Supply Center Philadelphia)
- Al Goeken (Glaxo)
- Alan Hilbauer (AstraZeneca)
- Alan J. Milbauer (AstraZeneca)
- Albert Thigpen (AdvancePCS)
- Alex Gorski
- Alfred Thigpen (Caremark)
- Alisha Nielsen (First DataBank)
- Allan Zimmerman (District Council 37)
- Amy Malone (Cardinal)
- Andrew Price
- Anne Faul (Glaxo)
- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)
- Bernard Gorter
- Beth Wingate (Express Scripts, Inc.)
- Bill Wright (First DataBank)
- Bob Croft
- Bob James (McKesson)
- Brent Stansbury (Aventis)
- Carol Sidwell (John Deere Healthcare)
- Carolle Caron (Aventis)
- Cathy McDougale
- Chad Lucero (Medics)

- Christina Macinski (Express Scripts, Inc.)
- Claire Brunken (Aventis)
- Clayton Bishop (US Pharmaceuticals)
- Connie Dominlanni
- Cynthia-Lynn Davies (AstraZeneca)
- Daniel Salemi (Albertson's)
- Dave Pickhardt (Aventis)
- David Brennan (AstraZeneca)
- David Joyner (Caremark)
- David Kuehl (AmerisourceBergen)
- David Sheffield
- Diane Ortiz (Johnson & Johnson)
- Don G. Beamish
- Donny Dowlen (Southern Benefit Administrators)
- Earl Seymour (Pirelli Armstrong Retiree Medical Benefits Trust)
- Ed Bissler (McKesson)
- Edward Ignaczak (Express Scripts, Inc.)
- Edwin Hedblom (Express Scripts, Inc.)
- Elaine Kiso (First DataBank)
- Ellen J. Perlman (Express Scripts, Inc.)
- Ena West (AstraZeneca)
- Erik Schultz (AstraZeneca)
- Erlinda Thomas (McKesson)
- Ernst R. Berndt (Massachusetts Institute of Technology)
- Everette Neville (Express Scripts, Inc.)
- Gail Quam
- Glenn Engelmann (AstraZeneca)

- Glenn Forester (Aventis)
- Glenn M. Engelmann (AstraZeneca)
- Greg Yonko (McKesson)
- Gregory Madsen (Caremark)
- Guerdon Green (Aventis)
- Harry Vargo (Express Scripts, Inc.)
- Inna Dimishteyn (First DataBank)
- James Buckley (New England Carpenters Health Benefits Fund)
- James Liebman (AstraZeneca)
- Jason Dohm (Express Scripts, Inc.)
- Jeff Wagner (Aventis)
- Jeremy Gott
- Jerry Holleman (JJCUS)
- Jerry Merida (Aventis)
- Jill Krasting
- Jim McDermott (Aventis)
- Jim Shaner (Aventis)
- Jody Taylor (Cardinal Health)
- Johan Hoegstadt (AstraZeneca)
- John Bonner (McKesson)
- John Cervione (Aventis)
- John Freeberry (AstraZeneca)
- John Schohl (Medicis)
- John Szabo (Bristol-Myers Squibb)
- Joseph L. Hirschmann (First DataBank)
- Joseph Leonardi (Aventis)
- June Swan

- Kathleen Zemanek (AstraZeneca)
- Kathryn Stripling (AstraZeneca)
- Kathy Buto
- Kathy Stinehagen (AstraZeneca)
- Kaylor P. Kowash
- Kent Wuflestad (Express Scripts, Inc.)
- Kevin Connor (McKesson)
- Kim Becker (Express Scripts, Inc.)
- LaGreta Cosey (First DataBank)
- Leslie Friedman (McKesson)
- Lillie Laws (Aventis)
- Lora Henager (Medicis)
- Lori White (Defense Supply Center Philadelphia)
- Louise Mehrotra
- Mahendra M. Gupta
- Mark Johnston (Aventis)
- Mark L. Rickards
- Mark Milby
- Mary Harmon (Aventis)
- Michael Bannon
- Michael Fowler (Defense Supply Center Philadelphia)
- Michael Nelson (First DataBank)
- Michael P. Hickey
- Mike Anderson (Express Scripts, Inc.)
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Pamela Roberts (Express Scripts, Inc.)
- Patricia Kay Morgan (First DataBank)

- Paul Vasquez (Defense Supply Center Philadelphia)
- Pauline Chrenko (Aventis)
- Peter Krebs (US Pharmaceuticals)
- Peter Ngau (First DataBank)
- Pia Castillo (McKesson)
- Rachel Bloom-Baglin
- Ramon Crusit (McKesson)
- Rhonda Murphy (US Pharmaceuticals)
- Rhonda Rees
- Rich Fante (AstraZeneca)
- RMK (US Pharmaceuticals)
- Robert Spurr (Aventis)
- Rock Magnotta (ALZA Pharmaceuticals)
- Rosaria Esperon (District Council 37)
- Roslyn Yasser (District Council 37)
- Russ Graham (Aventis)
- Ryan Soderstrom (Express Scripts, Inc.)
- Sarah S. Harrison
- Stacy Chick (Aventis)
- Stephen Duda (Defense Supply Center Philadelphia)
- Stuart Bascomb (Express Scripts, Inc.)
- Stuart Fullerton (AstraZeneca)
- Stuart L. Fullerton (AstraZeneca)
- Sue Sommer (Express Scripts, Inc.)
- Terri Factora (First DataBank)
- Thomas Gilson (Medco)
- Thomas Scono

- Tom J. Lyons
- Tyrone Brewer (Aventis)
- William DiLauro (Defense Supply Center Philadelphia)
- William Einhorn (Teamsters Health & Welfare Fund)
- William Wright (First DataBank)

The documents forming a part of the source of McKesson's information regarding this defense include:

- ABC (AWP) 001954-001966
- AV-BCA-0010336
- AZ00707930
- AZ0432026-34
- AZ0463627-29
- AZ0463635-38
- AZ0464456
- AZ0464857-859
- AZ0468027-AZ0468040
- AZ0468041-AZ0468091
- AZ0565611-14
- AZ0692307-692311
- BMS/AWP/000125481-125516
- Car.Hlth/SLB 0739397
- Car.Hlth/SLB 0739496-97
- Car.Hlth/SLB 0739505-507
- Car.Hlth/SLB 0739530
- Car.Hlth/SLB 0740040-43
- Car.Hlth/SLB 0740406-08

- Car.Hlth/SLB 0740406-08
- CMK-AWP 012815-36
- CMK-AWP 012850-53
- CMK-AWP 012857-75
- D37 00480
- D37 00480-500
- D37 00831-0869
- D37 01064-69
- D37 01405-07
- DC37 06973-90
- ESI-277-00002640-56
- ESI-414-00001711-30
- ESI-414-00001762-63
- ESI-414-00001768-71
- ESI-414-00001794
- ESI-414-00001802
- ESI-414-00001805-6
- ESI-414-00001807-08
- ESI-414-00001884-2163
- ESI-414-00003711-12
- ESI-414-00004101
- ESI-414-00007160
- FDB/NEC 005951
- FDB/NEC 006017
- FDB/NEC 008778
- FDB/NEC 015320
- FDB/NEC 018437-39, 644-47, 650-53, 682-711, 813-16

- FDB/NEC 018441
- FDB/NEC 12248-53
- FDB-AWP 02005
- FDB-AWP 028338-028342
- FDB-AWP 032194-32202
- FDB-AWP 046440-441
- FDB-AWP 046953
- FDB-AWP 051757
- FDB-AWP 053695
- FDB-AWP 29178
- MCKAWP 0057174
- MCKAWP 0035460
- MCKAWP 0042515
- MCKAWP 0042663-68
- MCKAWP 0042663-69
- MCKAWP 0052115-118
- MCKAWP 0057171
- MCKAWP 0057172
- MCKAWP 0063067
- MCKAWP 0063071
- MCKAWP 0065883
- MCKAWP 0066001
- MCKAWP 0068132
- MCKAWP 0068261-62
- MCKAWP 0068304
- MCKAWP 0068311
- MCKAWP 0068514

- MCKAWP 0068519
- MCKAWP 0068603-4
- MCKAWP 0069590
- MCKAWP 0069591
- MCKAWP 0069592-93
- MCKAWP 0069608-10
- MCKAWP 0069611-13
- MCKAWP 0069611-15
- MCKAWP 0069616
- MCKAWP 0069766
- MCKAWP 0069942
- MCKAWP 0071419-21
- MCKAWP 0071694-5
- MCKAWP 0071422-24
- MDL-CEN00103689
- MHS A_0005138-52
- MHS A_0005153-59
- MHS A_0005160-72
- MHS A_0005173-75
- MHS A_0005177-85
- NPC 0066414-420
- NPC 0066414-420
- PFTHW-FDB 000027-56
- PIRELLI-FDB 0000277-323
- PIRELLI-FDB 0000329
- PIRELLI-FDB 0000340
- RB 00001-13341

- SEL_HLTH/NEC_0379-407
- THWF 1852

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Tenth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, to the extent that Plaintiffs and the putative class members have released, settled, entered into an accord and satisfaction of, or otherwise compromised their claims.”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the named plaintiffs or any absent member of the putative class settled, entered into an accord and satisfaction of, or otherwise compromised their claims against McKesson. McKesson is not currently aware of any facts that serve as the basis for this defense as against the named plaintiffs. Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

Eleventh Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, because they have suffered no damages as a result of the matters alleged in the Complaint.”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the named plaintiffs or any absent member of the putative class were able to counteract some or all economic impact of the increased WAC to AWP markups alleged in the Second Amended Class Action Complaint because, among other reasons, they: (1) renegotiated or entered into new reimbursement contracts with more favorable terms during the purported class period; (2) received larger rebates on purchases of prescription drugs; (3) did not pay for or reimburse purchases of prescription drugs based on AWP published by First DataBank; (4) reduced their costs of prescription drug benefits through revisions to the terms of the applicable prescription drug benefit plans or insurance policies governing their payment or reimbursement obligations. The evidence referenced in this response shows that the named plaintiffs and absent member of the putative classes were able to counteract some or all of the economic impact of the increased WAC to AWP markups alleged in the Complaint by negotiating new or revised reimbursement contracts with more favorable terms during the purported class period; receiving, either through negotiation or by operation of the terms of existing contracts, larger rebates on purchases of prescription drugs; and/or reducing their costs of prescription drug benefits through revisions to the terms of the applicable prescription drug benefit plans or insurance policies governing their payment or reimbursement obligations. In addition, some named plaintiffs and absent members of the purported classes did not pay for or reimburse purchases of brand-name prescription drugs that are the subject of this case based on AWP published by First DataBank, either because reimbursements were based on another source of AWP or because they were based on usual and customary pricing rather than AWP. In

addition, McKesson did not set AWP's published by First DataBank; McKesson established its own suggested sell price, which it reported to FDB in response to what it understood was a survey process. Throughout the alleged class period, FDB represented to McKesson, consistent with FDB's public statements, that FDB's AWP's were derived by it from a survey of multiple wholesalers. Plaintiffs' own Complaint allegations concede that multiple wholesalers continued to provide FDB with pricing information through most of the Class Period. FDB has affirmed in the MDL that it did not tell McKesson that McKesson was the only wholesaler at times being surveyed by FDB.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- Aaron King (Advance PCS)
- Aaron Krakow (unknown)
- Agnes Reitano (Defense Supply Center Philadelphia)
- Al Goeken (Glaxo)
- Alan J. Milbauer (AstraZeneca)
- Albert Thigpen (AdvancePCS)
- Alex Gorski
- Alisha Nielsen (First DataBank)
- Allan Zimmerman (District Council 37)
- Amy Malone (Cardinal)
- Andrew Price
- Anne Faul (Glaxo)

- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)
- Audrey Browne (District Council 37)
- Barbara Edmonds (District Council 37)
- Bernard Gorter
- Beth Wingate (Express Scripts, Inc.)
- Bob Croft
- Bob James (McKesson)
- Brent Stansbury (Aventis)
- C. Chin-Marshall (unknown)
- Carol Sidwell (John Deere Healthcare)
- Carolle Caron (Aventis)
- Cathy McDougale
- Chad Lucero (Medics)
- Christina Macinski (Express Scripts, Inc.)
- Claire Brunken (Aventis)
- Clayton Bishop (US Pharmaceuticals)
- Connie Dominlanni
- Cynthia-Lynn Davies (AstraZeneca)
- Dan Mandoli (Express Scripts, Inc.)
- Daniel Salemi (Albertson's)
- Dave Pickhardt (Aventis)
- David Brennan (AstraZeneca)
- David Brenner (Segal)
- David Brodsky (Express Scripts, Inc.)
- David Joyner (Caremark)
- David Kuehl (AmerisourceBergen)
- David Sheffield

- Deborah Young (Advance PCS)
- Diana Clark (UEBT)
- Diane Ortiz (Johnson & Johnson)
- Don G. Beamish
- Donny Dowlen (Southern Benefit Administrators)
- Earl Seymour (Pirelli Armstrong Retiree Medical Benefits Trust)
- Ed Bissler (McKesson)
- Edward Ignzaczak (Express Scripts, Inc.)
- Edwin Hedblom (Express Scripts, Inc.)
- Elaine Kiso (First DataBank)
- Ellen Perlman (Express Scripts, Inc.)
- Ena West (AstraZeneca)
- Erik Schultz (AstraZeneca)
- Erlinda Thomas (McKesson)
- Ernie Walker (District Council 37)
- Ernst R. Berndt (Massachusetts Institute of Technology)
- Everette Neville (Express Scripts, Inc.)
- Francis Curtis (District Council 37)
- Gail Quam
- Gary Dean (District Council 37)
- Glenn Engelmann (AstraZeneca)
- Glenn Forester (Aventis)
- Greg Yonko (McKesson)
- Gregory Madsen (Caremark)
- Guerdon Green (Aventis)
- Harry Dow (Segal)
- Harry Vargo (Express Scripts, Inc.)

- Henry Salvadori (Segal)
- Inna Dimishteyn (First DataBank)
- J. Thoens (unknown)
- Jack Fragie (McKesson), Larry Greco (McKesson)
- Jacqueline Posniack (Segal)
- James Buckley (New England Carpenters Health Benefits Fund)
- James Grosso (unknown)
- James Kenney (Harvard Pilgrim Health Care)
- James Liebman (AstraZeneca)
- James McGee (HCCCC)
- Jason Dohm (Express Scripts, Inc.)
- Jeff Wagner (Aventis)
- Jeremy Gott
- Jerry Holleman
- Jerry Merida (Aventis)
- Jill Krasting
- Jim McDermott (Aventis)
- Jim Shaner (Aventis)
- Jody Taylor (Cardinal Health)
- Johan Hoegstedt (AstraZeneca)
- John Bonner (McKesson)
- John Cervione (Aventis)
- John Cotton (Segal)
- John Freeberry (AstraZeneca)
- John O'Reilly (unknown)
- John Rasulo (National Prescription Administrators)
- John Schohl (Medicis)

- John Szabo (Bristol-Myers Squibb)
- Joseph L. Hirschmann (FirstDataBank)
- Joseph Leonardi (Aventis)
- Judith Maurath (APAIE 618 Health)
- June Swan
- Kathleen Zemanek (AstraZeneca)
- Kathryn Stripling (AstraZeneca)
- Kathy Buto
- Kathy Stinehagen (AstraZeneca)
- Kaylor P. Kowash (AstraZeneca)
- Kevin Connor (McKesson)
- Kim Becker (Express Scripts, Inc.)
- L. Griffin (unknown)
- LaGreta Cosey (First DataBank)
- Laura Albergo (District Council 37)
- Leslie Friedman (McKesson)
- Lillian Roberts (District Council 37)
- Lillie Laws (Aventis)
- Lora Henager (Medicis)
- Lori White (Defense Supply Center Philadelphia)
- Louise Mehrotra
- Mahendra M. Gupta
- Marc Palmer (Express Scripts, Inc.)
- Marilyn Gordon (ESI)
- Mark Johnston (Aventis)
- Mark L. Rickards
- Mark Milby

- Mary Harmon (Aventis)
- Matthew Gibbs (Hewitt)
- Michael Bannon
- Michael Fowler (Defense Supply Center Philadelphia)
- Michael Nelson (First DataBank)
- Michael P. Hickey
- Mike Anderson (Express Scripts, Inc.)
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Nancy Treglia-Saiduc (Express Scripts, Inc.)
- O. Wade (unknown)
- Oliver Gray (District Council 37)
- Onita Wade (District Council 37)
- Pamela Roberts (Express Scripts, Inc.)
- Patricia Kay Morgan (First DataBank)
- Paul Vasquez (Defense Supply Center Philadelphia)
- Pauline Chrenko (Aventis)
- Peter Krebs (US Pharmaceuticals)
- Peter Ngau (First DataBank)
- Pia Castillo (McKesson)
- Rachel Bloom-Baglin
- Ramon Crusit (McKesson)
- Rhonda Murphy (US Pharmaceuticals)
- Rhonda Rees
- Rich Fante (AstraZeneca)
- Richard Hopp (unknown),
- RMK (US Pharmaceuticals)
- Robert Hasiak (District Council 37)

- Robert Spurr (Aventis)
- Rock Magnotta (ALZA)
- Ron Tyson (Express Scripts, Inc.)
- Rosaria Esperon (District Council 37)
- Rosemarie Mongillo (Advance PCS)
- Roslyn Yasser (District Council 37)
- Russ Graham (Aventis)
- Ryan Soderstrom (Express Scripts, Inc.)
- Sara Sullivan (Advance PCS)
- Sarah S. Harrison
- Simone Rockstroh (HCCCC)
- Stacy Chick (Aventis)
- Stephanie Ellerman (Express Scripts, Inc.)
- Stephen Duda (Defense Supply Center Philadelphia)
- Stuart Bascomb (Express Scripts, Inc.)
- Stuart Fullerton (AstraZeneca)
- Sue Sommer (Express Scripts, Inc.)
- Susan Hayes (Physician Outcomes Specialists)
- T. Whittaker (District Council 37)
- Terri Factora (First DataBank)
- Thomas Gilson (Medco)
- Thomas Scono
- Tina Wong (Blue Cross Blue Shield Montana)
- Tom J. Lyons
- Tyrone Brewer (Aventis)
- Vinny Graziano (Segal)
- W. Chang (unknown)

- William Dale (unknown)
- William DiLauro (Defense Supply Center Philadelphia)
- William Einhorn (Teamster Health and Welfare Fund)
- William Fleming (Humana)
- William Wright (First DataBank)
- Willie Chang (District Council 37)

The documents forming a part of the source of McKesson's information regarding this defense include:

- ABC (AWP) 001954-001966
- AV-BCA-0010336
- AZ00707930
- AZ0432026-34
- AZ0463627-29
- AZ0463635-38
- AZ0464456
- AZ0464857-859
- AZ0468027-AZ0468040
- AZ0468041-AZ0468091
- AZ0565611-14
- AZ0692307-692311
- BMS/AWP/000125481-125516
- Car.Hlth/SLB 0739397
- Car.Hlth/SLB 0739496-97
- Car.Hlth/SLB 0739505-507
- Car.Hlth/SLB 0739530
- Car.Hlth/SLB 0740040-43

- Car.Hlth/SLB 0740406-08
- CARP 01994-1995
- CARP 02094-2095
- CARP-00091-189
- CARP-00274-275
- CARP-00291-292
- CMK-AWP 001888-2009
- CMK-AWP 011582-95
- CMK-AWP 012815-36
- CMK-AWP 012850-53
- CMK-AWP 012857-75
- CMK-AWP 013102-76
- CMK-AWP 013201-207
- CMK-AWP-001888-2009
- CMK-NECarp 000487-603
- CMK-NECarp 00486
- D37 00480-500
- D37 00831-0869
- D37 01064-69
- D37 01405-07
- D37 01428-01463
- D37 0446-61
- D37 0480-500
- D37 0673
- D37 0705-A-H
- D37 0711-A-D
- D37 0831-0869

- D370001-0012
- D37-ESI001-003
- DC37 02384-02413
- DC37 06204-06205
- DC37 06222-06227
- DC37 06402
- DC37 06597-06598
- DC37 06973-90
- DC37 07595-600
- DC37 07595-DC37 07599
- DC37 07974-07977
- DC37 08419-08421
- DC37 08427
- DC37 08478-08488
- DC37 08555-08564
- DC37 08685-08690
- DC37 09800-09803
- DC37 09804-09810
- DC37 09837-09843
- ESI-277-00002640-56
- ESI-414-00001711-30
- ESI-414-00001731
- ESI-414-00001740-41
- ESI-414-00001762-63
- ESI-414-00001768-71
- ESI-414-00001794
- ESI-414-00001802

- ESI-414-00001805-6
- ESI-414-00001807-08
- ESI-414-00001884-2163
- ESI-414-00002411
- ESI-414-00003711-12
- ESI-414-00003758-59
- ESI-414-00004101
- ESI-414-00007160
- FDB/NEC 005951
- FDB/NEC 006017
- FDB/NEC 008778
- FDB/NEC 015320
- FDB/NEC 018437-39
- FDB/NEC 018441
- FDB/NEC 018644-47
- FDB/NEC 018650-53
- FDB/NEC 018682-711
- FDB/NEC 018813-16
- FDB/NEC 12248-53
- FDB-AWP 02005
- FDB-AWP 028338-028342
- FDB-AWP 032194-32202
- FDB-AWP 046440-441
- FDB-AWP 046953
- FDB-AWP 051757
- FDB-AWP 053695
- FDB-AWP 29178

- HCCCC-AWP0254-55
- MCKAWP 0035460
- MCKAWP 0042515
- MCKAWP 0042663-70
- MCKAWP 0052115-18
- MCKAWP 0057171
- MCKAWP 0057172
- MCKAWP 0057174
- MCKAWP 0063067
- MCKAWP 0063071
- MCKAWP 0065883
- MCKAWP 0066001
- MCKAWP 0068132
- MCKAWP 0068261-62
- MCKAWP 0068304
- MCKAWP 0068311
- MCKAWP 0068514
- MCKAWP 0068519
- MCKAWP 0068603-04
- MCKAWP 0069590
- MCKAWP 0069591
- MCKAWP 0069592-93
- MCKAWP 0069608-10
- MCKAWP 0069611-13
- MCKAWP 0069614
- MCKAWP 0069766
- MCKAWP 0069942

- MCKAWP 0071419-21
- MCKAWP 0071422-24
- MCKAWP 0071694-5
- MDL-CEN00103689
- MHS A_0005138-52
- MHS A_0005153-59
- MHS A_0005160-72
- MHS A_0005173-75
- MHS A_0005177-85
- NPC 0066414-420
- Patricia Kay Morgan Exhibit 49
- PFTH-FDB 002053-2054
- PFTHW 0156
- PFTHW 1415-1454
- PFTHW 2459
- PFTHW 2478
- PFTHW-FDB 000027-56
- PFTHW-FDB 000645-000684
- PFTHW-FDB 001978-1985
- PFTHW-FDB 002042
- PFTHW-FDB 002044
- PFTHW-FDB 002112-002135
- PFTWH 2479
- PIRELLI-FDB 0000277-323
- PIRELLI-FDB 0000329
- PIRELLI-FDB 0000340
- Segal/NEC 04782-04786

- Segal/NEC 04792-04829
- Segal/NEC 06584-06587
- Segal-Carpenter 000245-256
- Segal-Carpenter 000293-299
- Segal-Carpenter 000308-309
- Segal-Carpenter 001114-116
- Segal-Carpenter 001623-624
- Segal-Carpenter 002501-514
- SEL_HLTH/NEC_0379-407
- THWF 0001 - 0034
- THWF 0147-152
- THWF 0181-83
- THWF 1852
- THWF 2104-2107
- THWF 3170-3171
- THWF 4802
- THWF 4808-4809

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response reflected in the documents identified above.

Twelfth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, by the doctrines of res judicata and collateral estoppel.”

Basis

McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the claims brought by or on behalf of the named plaintiffs or any absent member of the putative class are barred by the doctrines of res judicata or collateral estoppel as a result of the adjudication of another action presenting the same claims or issues. For example, issues or claims decided in the related MDL action, *In re Pharmaceutical Industry Average Wholesale Price Litigation*, No. 01-12257, may be asserted by McKesson in support of this affirmative defense. McKesson is not currently aware of any facts that would serve as the basis for this defense as against the named plaintiffs. Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

Thirteenth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, because McKesson’s actions were undertaken in good faith and in accordance with established industry practices.”

Basis

McKesson’s setting of Suggested Sell Price and reporting of that and other price information to First Databank and was done in good faith in accordance with established industry practices. McKesson did not set AWP. McKesson understands that AWP were at all relevant times derived and published by First DataBank, Medi-Span and Redbook. First DataBank represented to McKesson, consistent with its public representations, that First DataBank’s reported AWP were based on the results of surveys that First DataBank conducted of

pharmaceutical drug wholesalers and on information from manufacturers. In addition, McKesson did not set AWP's published by First DataBank; McKesson established its own suggested sell price, which it reported to FDB in response to what it understood was a survey process. Throughout the alleged class period, FDB represented to McKesson, consistent with FDB's public statements, that FDB's AWP's were derived by it from a survey of multiple wholesalers. Plaintiffs' own Complaint allegations concede that multiple wholesalers continued to provide FDB with pricing information through most of the Class Period. FDB has affirmed in the MDL that it did not tell McKesson that McKesson was the only wholesaler at times being surveyed by FDB.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- Agnes Reitano (Defense Supply Center Philadelphia)
- Alan J. Milbauer (AstraZeneca)
- Alex Gorski
- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)
- Bernard Gorter
- Bob James (McKesson)
- Chad Lucero (Medics)
- Clayton Bishop (US Pharmaceuticals)
- Cynthia-Lynn Davies (AstraZeneca)
- Daniel Salemi (Albertson's)
- David Joyner (Caremark)

- David Sheffield
- Diane Ortiz
- Donny Dowlen (Southern Benefit Administrators)
- Earl Seymour (Pirelli Armstrong Retiree Medical Benefits Trust)
- Ed Bissler (McKesson)
- Edward Ignaczak (Express Scripts, Inc.)
- Erlinda Thomas (McKesson)
- Glenn M. Engelmann (AstraZeneca)
- Greg Yonko (McKesson)
- James Buckley (New England Carpenters Health Benefits Fund)
- James Liebman (AstraZeneca)
- Jerry Holleman
- Johan Hoegstedt (AstraZeneca)
- John Bonner (McKesson)
- John Freeberry (AstraZeneca)
- John Schohl (Medicis)
- John Szabo (Bristol-Myers Squibb)
- June Swan
- Kathleen Zemanek (AstraZeneca)
- Kathy Buto
- Kathy Stinehagen (AstraZeneca)
- Leslie Friedman (McKesson)
- Lori White (Defense Supply Center Philadelphia)
- Louise Mehrotra
- Michael Bannon
- Michael Fowler (Defense Supply Center Philadelphia)
- Patricia Kay Morgan (First DataBank)

- Paul Vasquez (Defense Supply Center Philadelphia)
- Peter Krebs (US Pharmaceuticals)
- Pia Castillo (McKesson)
- Ramon Crusit (McKesson)
- Rhonda Murphy (US Pharmaceuticals)
- RMK (US Pharmaceuticals)
- Rock Magnotta (ALZA)
- Rosaria Esperon (DC 37)
- Stephen Duda (Defense Supply Center Philadelphia)
- Stuart L. Fullerton (AstraZeneca)
- Thomas Gilson (Medco)
- Thomas Scono
- William DiLauro (Defense Supply Center Philadelphia)
- William Einhorn (Teamsters Health & Welfare Fund)

The documents forming a part of the source of McKesson's information regarding this defense include:

- ABC (AWP) 001954-001966
- AV-BCA-0010336
- AV-BCA-0010337
- AV-BCA-0010338
- AV-BCA-0010339
- AV-BCA-0010340
- BMS/AWP/000125481-125516
- Car.Hlth/SLB 0739397
- Car.Hlth/SLB 0739496-97
- Car.Hlth/SLB 0739505-507

- Car.Hlth/SLB 0739530
- Car.Hlth/SLB 0740040-43
- Car.Hlth/SLB 0740406-08
- Car.Hlth/SLB 0740406-08
- FDB/NEC 005951
- FDB/NEC 006017
- FDB/NEC 008778
- FDB/NEC 015320
- FDB/NEC 018437-39, 644-47, 650-53, 682-711, 813-16
- FDB/NEC 018441
- FDB/NEC 12248-53
- FDB-AWP 02005
- FDB-AWP 028338-028342
- FDB-AWP 032194-32202
- FDB-AWP 046440-441
- FDB-AWP 046953
- FDB-AWP 051757
- FDB-AWP 053695
- FDB-AWP 053696
- FDB-AWP 053697
- FDB-AWP 053698
- FDB-AWP 053699
- FDB-AWP 29178
- MCKAWP 0035460
- MCKAWP 0042663-69
- MCKAWP 0052115-118
- MCKAWP 0057171

- MCKAWP 0057172
- MCKAWP 0063067
- MCKAWP 0063071
- MCKAWP 0068514
- MCKAWP 0069608-10
- MCKAWP 0069611-15
- MCKAWP 0069766
- MCKAWP 0071419-21
- MCKAWP 0071422-24
- MDL-CEN00103689
- NPC 0066414-420
- NPC 0066414-420
- RB 00001-13341

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response reflected in the documents identified above.

Fourteenth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, because any injuries sustained by Plaintiffs were the result of intervening or superseding conduct of other parties.”

Basis

While denying that plaintiffs suffered damages in any amount for the claims alleged in the Second Amended Complaint, McKesson asserted this affirmative defense to preserve its rights should the evidence establish that the named plaintiffs or any absent member of the putative class did not sustain any injury or loss as a result of McKesson's statements or actions because, among other reasons, AWP's were derived and published by First DataBank, Medispan and Redbook based on their own methodologies, including surveys that they represented they conducted of pharmaceutical drug wholesalers and on information from manufacturers. McKesson did not set AWP's published by First DataBank; McKesson established its own suggested sell price, which it reported to FDB in response to what it understood was a survey process. Throughout the alleged class period, FDB represented to McKesson, consistent with FDB's public statements, that FDB's AWP's were derived by it from a survey of multiple wholesalers. Plaintiffs' own Complaint allegations concede that multiple wholesalers continued to provide FDB with pricing information through most of the Class Period. FDB has affirmed in the MDL that it did not tell McKesson that McKesson was the only wholesaler at times being surveyed by FDB.

Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. As of the date of this response, McKesson has identified the following witnesses, documents and communications that could potentially support this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

The witnesses supporting this affirmative defense include:

- Agnes Reitano (Defense Supply Center Philadelphia)
- Al Goeken (Glaxo)
- Alan Hilbauer (AstraZeneca)
- Alan J. Milbauer (AstraZeneca)
- Albert Thigpen (AdvancePCS)

- Alex Gorski
- Alisha Nielsen (First DataBank)
- Allan Zimmerman (District Council 37)
- Amy Malone (Cardinal Health)
- Andrew Price
- Anne Faul (Glaxo)
- Arthur Steinberg (Philadelphia Federation of Teachers Health & Welfare Fund)
- Bernard Gorter
- Beth Wingate (Express Scripts, Inc.)
- Bill Wright (First DataBank)
- Bob Croft
- Bob James (McKesson)
- Brent Stansbury (Aventis)
- Carol Sidwell (John Deere Healthcare)
- Carolle Caron (Aventis)
- Cathy McDougale
- Chad Lucero (Medics)
- Chris Macinski (Express Scripts, Inc.)
- Christina Macinski (Express Scripts, Inc.)
- Claire Brunken (Aventis)
- Clayton Bishop (US Pharmaceuticals)
- Connie Dominlann
- Cynthia-Lynn Davies (AstraZeneca)
- Daniel Salemi (Albertson's)
- Dave Pickhardt (Aventis)
- David Brennan (AstraZeneca)
- David Joyner (Caremark)

- David Kuehl (AmerisourceBergen)
- David Sheffield (Corp.) (JJCUS)
- Diane Ortiz (Johnson & Johnson)
- Don G. Beamish
- Donny Dowlen (Southern Benefit Administrators)
- Earl Seymour (Pirelli Armstrong Retiree Medical Benefits Trust)
- Ed Bissler (McKesson)
- Edward Ignaczak (Express Scripts, Inc.)
- Edwin Hedblom (Express Scripts, Inc.)
- Elaine Kiso (First DataBank)
- Ellen J. Perlman (Express Scripts, Inc.)
- Ena West (AstraZeneca)
- Erik Schultz (AstraZeneca)
- Erlinda Thomas (McKesson)
- Ernst R. Berndt (Massachusetts Institute of Technology)
- Everette Neville (Express Scripts, Inc.)
- Gail Quam
- Glenn Engelmann (AstraZeneca)
- Glenn Forester (Aventis)
- Glenn M. Engelmann (AstraZeneca)
- Greg Yonko (McKesson)
- Gregory Madsen (Caremark)
- Guerdon Green (Aventis)
- Harry Vargo (Express Scripts, Inc.)
- Inna Dimishteyn (First DataBank)
- James Buckley (New England Carpenters Health Benefits Fund)
- James Liebman (AstraZeneca)

- Jason Dohm (Express Scripts, Inc.)
- Jeff Wagner (Aventis)
- Jeremy Gott
- Jerry Holleman
- Jerry Merida (Aventis)
- Jill Krasting
- Jim McDermott (Aventis)
- Jim Shaner (Aventis)
- Jody Taylor (Cardinal Health)
- Johan Hoegstedt (AstraZeneca)
- John Bonner (McKesson)
- John Cervione (Aventis)
- John Freeberry (AstraZeneca)
- John Schohl (Medicis)
- John Szabo (Bristol-Myers Squibb)
- Joseph L. Hirschmann (First DataBank)
- Joseph Leonardi (Aventis)
- June Swan
- Kathleen Zemanek (AstraZeneca)
- Kathryn Stripling (AstraZeneca)
- Kathy Buto (JJCUS)
- Kathy Stinehagen (AstraZeneca)
- Kaylor P. Kowash (AstraZeneca)
- Kent Wuflestad (Express Scripts, Inc.)
- Kevin Connor (McKesson)
- Kim Becker (Express Scripts, Inc.)
- LaGreta Cosey (First DataBank)

- Leslie Friedman (McKesson)
- Lillie Laws (Aventis)
- Lora Henager (Medicis)
- Lori White (Defense Supply Center Philadelphia)
- Louise Mehrotra
- Mahendra M. Gupta
- Mark Johnston (Aventis)
- Mark L. Rickards
- Mark Milby
- Mary Harmon (Aventis)
- Michael Bannon
- Michael Fowler (Defense Supply Center Philadelphia)
- Michael Nelson (First DataBank)
- Michael P. Hickey
- Mike Anderson (Express Scripts, Inc.)
- MyNgoc Dang-Nguyen (Capital Blue Cross)
- Pamela Roberts (Express Scripts, Inc.)
- Patricia Kay Morgan (First DataBank)
- Paul Vasquez (Defense Supply Center Philadelphia)
- Pauline Chrenko (Aventis)
- Peter Krebs (US Pharmaceuticals)
- Peter Ngau (First DataBank)
- Pia Castillo (McKesson)
- Rachel Bloom-Baglin
- Ramon Crusit (McKesson)
- Rhonda Murphy (US Pharmaceuticals)
- Rhonda Rees

- Rich Fante (AstraZeneca)
- RMK (US Pharmaceuticals)
- Robert Spurr (Aventis)
- Rock Magnotta (ALZA)
- Rosaria Esperon (DC 37)
- Roslyn Yasser (District Council 37)
- Russ Graham (Aventis)
- Ryan Soderstrom (Express Scripts, Inc.)
- Sarah S. Harrison
- Stacy Chick (Aventis)
- Stephen Duda (Defense Supply Center Philadelphia)
- Stuart Bascomb (Express Scripts, Inc.)
- Stuart Fullerton (AstraZeneca)
- Stuart L. Fullerton (AstraZeneca)
- Sue Sommer (Express Scripts, Inc.)
- Terri Factora (First DataBank)
- Thomas Gilson (Medco)
- Thomas Scono
- Tom J. Lyons
- Tyrone Brewer (Aventis)
- William DiLauro (Defense Supply Center Philadelphia)
- William Einhorn (Teamsters Health & Welfare Fund)
- William Wright (First DataBank);

The documents forming a part of the source of McKesson's information regarding this defense include:

- ABC (AWP) 001954-001966

- AV-BCA-0010336
- AV-BCA-0010337
- AV-BCA-0010338
- AV-BCA-0010339
- AV-BCA-0010340
- AZ0468027-AZ0468040
- AZ0468041-AZ0468091
- BMS/AWP/000125481-125516
- Car.Hlth/SLB 0739397
- Car.Hlth/SLB 0739496-97
- Car.Hlth/SLB 0739505-507
- Car.Hlth/SLB 0739530
- Car.Hlth/SLB 0740040-43
- Car.Hlth/SLB 0740406-08
- Car.Hlth/SLB 0740406-08
- CMK-AWP 012815-36
- CMK-AWP 012850-53
- CMK-AWP 012857-75
- D37 00480
- D37 00480-500
- D37 00831-0869
- D37 01064-69
- D37 01405-07
- DC37 06973-90
- ESI-277-00002640-56
- ESI-414-00001711-30
- ESI-414-00001762-63

- ESI-414-00001768-71
- ESI-414-00001794
- ESI-414-00001805-6
- ESI-414-00001884-2163
- ESI-414-00003711-12
- ESI-414-00004101
- ESI-414-00007160
- FDB/NEC 005951
- FDB/NEC 006017
- FDB/NEC 008778
- FDB/NEC 015320
- FDB/NEC 018437-39, 644-47, 650-53, 682-711, 813-16
- FDB/NEC 018441
- FDB/NEC 12248-53
- FDB-AWP 02005
- FDB-AWP 028338-028342
- FDB-AWP 032194-32202
- FDB-AWP 046440-441
- FDB-AWP 046953
- FDB-AWP 051757
- FDB-AWP 053695
- FDB-AWP 053696
- FDB-AWP 053697
- FDB-AWP 053698
- FDB-AWP 053699
- FDB-AWP 29178
- MCKAWP 0035460

- MCKAWP 0042663-69
- MCKAWP 0052115-118
- MCKAWP 0057171
- MCKAWP 0057172
- MCKAWP 0063067
- MCKAWP 0063071
- MCKAWP 0068514
- MCKAWP 0069608-10
- MCKAWP 0069611-15
- MCKAWP 0069766
- MCKAWP 0071419-21
- MCKAWP 0071422-24
- MDL-CEN00103689
- MHS A_0005138-52
- MHS A_0005153-59
- MHS A_0005160-72
- MHS A_0005173-75
- MHS A_0005177-85
- NPC 0066414-420
- NPC 0066414-420
- PFTHW-FDB 000027-56
- PIRELLI-FDB 0000277-323
- PIRELLI-FDB 0000329
- PIRELLI-FDB 0000340
- RB 00001-13341
- SEL_HLTH/NEC_0379-407

Communications

Communications that form the basis of this affirmative defense are reflected in the documents identified above.

Acts or Omissions

McKesson is not currently aware of any acts or omissions that form the basis of this defense beyond those described in this response or reflected in the documents identified above.

Fifteenth Affirmative Defense: “Plaintiffs’ and the putative class’s claims are barred, in whole or in part, by the First and Fourteenth Amendments to the United States Constitution and the analogous provisions of the Constitutions of California, Massachusetts, and any other States whose laws are or become relevant in the course of this litigation.”

Basis

This defense is based solely on plaintiffs’ Second Amended Class Action Complaint and presents a legal argument. The claims of the named plaintiffs and the absent members of the putative class are barred, in whole or in part, to the extent that they are based on speech protected under the United States Constitution and applicable State Constitutions. McKesson is not currently aware of any facts that would serve as the basis for this defense as against the named plaintiffs. Discovery in this action is ongoing, no class has been certified, and McKesson has not fully explored all facts relevant to this affirmative defense. While not obligating itself to do so, McKesson reserves the right to supplement this response upon discovery of additional facts.

Dated: May 10, 2007

MORRISON & FOERSTER LLP

By: /s/ Tiffany Cheung

Tiffany Cheung

Attorneys for Defendant

McKESSON CORPORATION

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on May 10, 2007 as follows:

Via E-mail

<p>Steve W. Berman Elizabeth Fegan Barbara Mahoney David Nalven Ed Notargiacomo Thomas M. Sobol steve@hbsslaw.com beth@hbsslaw.com barbaram@hbsslaw.com davidn@hbsslaw.com ed@hbsslaw.com Tom@hbsslaw.com</p> <p><i>Counsel for Plaintiffs</i></p>	<p>George E. Barrett Edmund L. Carey Gerald E. Martin Timothy L. Miles gbarrett@barrettjohnston.com tcarey@barrettjohnston.com jmartin@barrettjohnston.com tmiles@barrettjohnston.com</p> <p><i>Counsel for Plaintiffs</i></p>	<p>Kenneth A. Wexler Jennifer Fountain Connolly kaw@wtwlaw.us jfc@wtwlaw.us Jeffrey Kodroff John Macoretta jkodroff@srk-law.com jmacoretta@srk-law.com</p> <p><i>Counsel for Plaintiffs</i></p>
<p>Sheila Birnbaum Thomas Fox Matthew Matule Mark Redman sbirnbau@skadden.com tfox@skadden.com mmatule@skadden.com mredman@hearst.com</p> <p><i>Counsel for First DataBank</i></p>		

/s/ Tiffany Cheung.
Tiffany Cheung

Exhibit 2

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST;
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY;
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE
FUND; DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE
SWAN; MAUREEN COWIE and BERNARD
GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation; and McKESSON
CORPORATION, a Delaware corporation,

Defendants.

C.A. No. 1:05-CV-11148-PBS

**PLAINTIFFS' THIRD AMENDED RESPONSES AND OBJECTIONS TO
MCKESSON'S FIRST SET OF INTERROGATORIES**

Plaintiffs, through their undersigned counsel, hereby respond pursuant to Fed. R. Civ. P.
33 to McKesson Corporation's First Set of Interrogatories.

GENERAL OBJECTIONS

1. Plaintiffs object to the instructions and definitions purportedly made a part of the Interrogatories to the extent they are vague, indefinite, ambiguous, or to the extent they seek to impose duties and/or responsibilities beyond that which is required by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the District of Massachusetts.

2. Plaintiffs object to the definition of “document” to the extent that it exceeds the meaning and scope of that term as it is defined by Local Rule 26.5(c)(2).

3. Plaintiffs object to the definition of “Funds” to the extent it purports to require the furnishing of documents or information in the possession, custody, or control of persons or entities other than Plaintiffs.

4. Plaintiffs object to the definition of “You” and “Yours” to the extent they purport to require the furnishing of documents or information in the possession, custody, or control of persons or entities other than Plaintiffs.

5. Plaintiffs object to Instruction No. 6 to the extent that it imposes an obligation that exceeds the obligation imposed by Local Rule 33.1(e).

6. Plaintiffs object to the Interrogatories to the extent that they seek information that is not within Plaintiffs’ possession, custody or control.

7. Plaintiffs object to the Interrogatories to the extent that they seek information that is publicly available or readily available to Defendant.

8. Plaintiffs object to the Interrogatories to the extent that they seek information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege. If any information subject to a privilege, immunity or protection is inadvertently disclosed by Plaintiffs, such disclosure does not constitute a waiver of any privilege, immunity or protection.

9. Plaintiffs object to the Interrogatories to the extent they are premature in that Defendant seeks factual bases for assertions that go to the merits of Plaintiffs’ claims and merits discovery is ongoing.

10. Plaintiffs object to the Interrogatories to the extent that they seek to impose unilaterally an obligation on Plaintiffs, which McKesson declined to recognize when it refused to respond to Plaintiffs' interrogatories about the basis for its opposition to class certification. Although Plaintiffs believe that they were entitled to McKesson's responses prior to the submission of its opposition brief, Plaintiffs are under no obligation to respond while fact discovery is ongoing.

11. Plaintiffs object to the Interrogatories to the extent that they are overbroad in that they require Plaintiffs to identify each and every document and each and every witness supporting their claims and allegations.

12. Plaintiffs object to the Interrogatories in that they place an undue burden on Plaintiffs at this time to collect the information sought while discovery is ongoing, especially in that Defendant seeks to impose a recurring obligation to amend and supplement Plaintiffs' response as additional evidence surfaces.

13. Plaintiffs reserve the right to supplement or amend these responses and objections as further investigation and discovery occur.

14. Plaintiffs reserve all objections regarding the competency, materiality, relevance and admissibility of any documents or information provided.

15. The preceding general objections are incorporated in response to each specific Interrogatory and any specific objection made below.

RESPONSES AND SPECIFIC OBJECTIONS TO INTERROGATORIES

Interrogatory No. 1

State the basis for your allegation in paragraph 92 of the SAC that "beginning in or around 1998 and thereafter, virtually every participant in the pharmaceutical distribution chain

who used electronic database systems used and relied upon the accuracy of data from First Data's NDDF and MDDF, including the published WAC and AWP price fields in undertaking reimbursement transactions for billions of dollars of pharmaceutical products."

Response No. 1

Plaintiffs object to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work-product doctrine. Plaintiffs further object to this interrogatory as it is overly broad and unduly burdensome at this stage of the litigation when discovery is ongoing and reserve their right to amend their response accordingly. Subject to and without waiver of the foregoing general and specific objections, Plaintiffs answer as follows:

- (a) Documents: FTC Press Release, dated December 14, 2001, available at <http://www.ftc.gov/opa/2001/12/hearst.shtm>; FDB-AWP 028261-63; MCKAWP 0057415-19; MCKAWP 0057171; MCKAWP 0080608-09.
- (b) Communications: *see* (a) to this response;
- (c) Acts or omissions: *see* (d) to this response;
- (d) Additional facts: as detailed in SAC ¶¶ 83-93, NDDF and MDDF are drug databases for FDB and Medi-Span respectively. FDB merged with Medi-Span in January 1998, making it the only comprehensive drug database available; and for years after the divestiture in January 2002 it provided its pricing data to Medi-Span. Kay Morgan and Bob James are believed to be knowledgeable about this allegation.

Interrogatory No. 2

State the basis for your allegation in paragraph 111 of the SAC that “McKesson knew . . . many of the AWP’s, and the timing of the reported AWP’s, provided by First Data’s electronic files were often, albeit marginally higher than other publications.”

Response No. 2

Plaintiffs object to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work-product doctrine. Plaintiffs further object to this interrogatory as it is overly broad and unduly burdensome at this stage of the litigation when discovery is ongoing and reserve their right to amend their response accordingly. Subject to and without waiver of the foregoing general and specific objections, Plaintiffs answer as follows:

- (a) Documents: MCKAWP 0057171; MCKAWP 0071502; MCKAWP 0080608-09;
- (b) Communications: *see* (a) to this response;
- (c) Acts or omissions: Bob James acknowledged that Medi-Span’s pricing data was essentially the same as FDB’s because FDB provided it to Medi-Span and that FDB’s AWP’s were higher than Redbook.
- (d) Additional facts: *see* (c) to this response; Bob James is knowledgeable about this allegation.

Interrogatory No. 3

State the basis for your allegation in paragraph 112 of the SAC that “[i]n and around 1999, national chains and retailers requested increased AWP spread for branded products and some of them engaged in practices in order to ensure that the increased markups would occur.”

Response No. 3

Plaintiffs object to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work-product doctrine. Plaintiffs further object to this interrogatory as it is overly broad and unduly burdensome at this stage of the litigation when discovery is ongoing and reserve their right to amend their response accordingly. Subject to and without waiver of the foregoing general and specific objections, Plaintiffs answer as follows:

- (a) Documents: MDL-HCS 00282596-97;
- (b) Communications: *see* (a) to this response;
- (c) Acts or omissions: Walmart and CVS refused to stock certain J&J products unless the AWP markup was greater than 20%;
- (d) Additional facts: *see* (c) to this response; Kurt Barry (formerly of Janssen) is believed to be knowledgeable but his current whereabouts are unknown.

Interrogatory No. 4

State the basis for your allegation in paragraph 138 of the SAC that “at some point in 2002-2003, certain manufacturers and wholesalers who were angry at the bump in the WAC-to-AWP spread, refused to provide First Data with pricing information.”

Response No. 4

Plaintiffs object to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work-product doctrine. Plaintiffs further object to this interrogatory as it is overly broad and unduly burdensome at this stage of the litigation when discovery is ongoing and reserve their right to amend their response accordingly. Subject to and without waiver of the foregoing general and specific objections, Plaintiffs answer as follows:

- (a) Documents: Plaintiffs are not currently aware of any documents to support this allegation.
- (b) Communications: *see* (a) and (d) to this response;
- (c) .Acts or omissions: *see* (d) to this response;
- (d) Additional facts: While Kay Morgan has testified that manufacturers withheld pricing information from FDB during the Class Period; Plaintiffs are not presently aware of any particular manufacturers or wholesalers who did so because they were angry about the bump or when this may have occurred. Discovery is ongoing and Plaintiffs reserve the right to supplement their response, as needed. Kay Morgan is believed to be knowledgeable about this claim.

Interrogatory No. 5

If You allege that the class definition set forth in paragraph 153 of the SAC includes consumers and TPPs who paid for brand-name pharmaceutical drugs based on AWP's disseminated by publishers other than First DataBank, identify all such publishers.

Response No. 5

Plaintiffs object to this interrogatory as it is unduly burdensome, including to the extent that it seeks information readily apparent from the allegations of Plaintiffs' Second Amended Complaint. Without waiving their objections, Plaintiffs respond as follows:

Medi-Span.

Interrogatory No. 6

State the basis for your allegation in paragraph 186 of the SAC that "[t]he Enterprise had a hierarchical decision-making structure headed by McKesson."

Response No. 6

Plaintiffs object to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work-product doctrine. Plaintiffs further object to this interrogatory as it is overly broad and unduly burdensome at this stage of the litigation when discovery is ongoing and reserve their right to amend their response accordingly. Subject to and without waiver of the foregoing general and specific objections, Plaintiffs answer as follows:

(a) Documents: MCKAWP 0069608; MCKAWP 0063070-71; MCKAWP 0065885;

MCKAWP 0068599; MCKAWP 0068621; MCKAWP 0065895; MCKAWP

0081250; MCKAWP 0069586; MCKAWP 0069602; MCKAWP 0069609;

MCKAWP 0042663; MCKAWP 0069615-16; MCKAWP 0069617-39; MCKAWP

0069669; MCKAWP 0069717; MCKAWP 0066191-92; MCKAWP 0071670-72;

MCKAWP 0070781; MCKAWP 001168-70; MCKAWP 0070784; MCKAWP

0070826; MCKAWP 0001188-89; MCKAWP 0070877; and MCKAWP 0070967.

(b) Communications: *see* (a) to this response;

(c) Acts or omissions: *see* (d) to this response;

(d) Additional facts: As early as 2000 or 2001 McKesson had a specific plan to raise markups in the industry. Beginning in or about August 2001, McKesson sought FDB's agreement to raise markups on selected drugs. Aside from any responses McKesson may have believed it was giving in response to an alleged survey by FDB, McKesson actively solicited FDB to raise markups on hundreds of drugs, including by providing FDB with AWP comparison charts in advance or outside of any request by FDB; identifying "problem vendors" and actively seeking to increase markups for particular drugs to benefit its primary customers, the retail pharmacies. Persons

believed to have knowledge: Kay Morgan; Bob James; Greg Yonko; John Bonner; Jeff Herzfeld, Larrie Greco; Erlinda Thomas; Dan Pantano; Phil Bolger; and Jeff Wallis.

Interrogatory No. 7

State the basis for your allegation in paragraph 199 of the SAC that “McKesson was aware of . . . [alleged false] representations by “First Data . . . as to the meaning of AWP and how it was derived”

Response No. 7

Plaintiffs object to this interrogatory to the extent it seeks information protected by the attorney-client privilege or the work-product doctrine. Plaintiffs further object to this interrogatory as it is overly broad and unduly burdensome at this stage of the litigation when discovery is ongoing and reserve their right to amend their response accordingly. Subject to and without waiver of the foregoing general and specific objections, Plaintiffs answer as follows:

- (a) Documents: MCKAWP 0069608; MCKAWP 0042663; MCKAWP 0065885; and MCKAWP 0069615-16 (evidencing the existence of an agreement between McKesson and FDB to change AWP markups) and, alternatively, *see* documents identified in response to Interrogatory No. 6 (evidencing McKesson’s undue influence over FDB’s decision to raise AWPs, from which it is sufficient to conclude that McKesson knew that FDB’s representations about the role of surveys in the calculation of AWPs, detailed in ¶¶ 114-16, was false or misleading).
- (b) Communications: *see* (a) to this response;
- (c) Acts or omissions: *see* (a) to this response;

(d) Additional facts/known witnesses: *see* (a) to this response as well as the factual allegations and persons with knowledge identified in response to Interrogatory No. 6.

DATED: May 10, 2007

By /s/ Steve W. Berman

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above-referenced document was served upon the attorney of record listed below by electronic mail on May 10, 2007:

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Counsel for McKesson Corporation

/s/ Steve W. Berman
Steve W. Berman

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY, and
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND,
and DISTRICT COUNCIL 37 HEALTH &
SECURITY PLAN,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and McKESSON CORPORATION,
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

**McKESSON CORPORATION'S SECOND AMENDED NOTICE OF DEPOSITION OF
DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN**

PLEASE TAKE NOTICE THAT pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, McKesson Corporation, by its attorneys, will take the deposition of District Council 37 Health & Security Plan by the person or persons who are knowledgeable concerning the matters set forth in Exhibit A attached hereto. Such deposition will now be taken on November 6, 2006, beginning at 9:30 a.m., at the offices of Morrison & Foerster LLP, 1290 Avenue of the Americas, New York, New York, 10104. The deposition will be taken before an officer

authorized to administer oaths, be recorded by a stenographer, and may be videotaped, and may provide for LiveNote access, and will continue from day to day, Saturday, Sundays and holidays excepted, until completed.

McKesson reserves the right to take subsequent depositions, not just on all material issues, but also on those issues raised by any documents produced after the date of this Notice.

Dated October 26, 2006

MELVIN R. GOLDMAN
LORI A. SCHECHTER
PAUL FLUM
TIFFANY CHEUNG
MORRISON & FOERSTER LLP

By: /s/ Paul Flum
Paul Flum

Attorneys for Defendant
MCKESSON CORPORATION

CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on October 26, 2006 via e-mail to:

Steve W. Berman Elizabeth Fegan Barbara Mahoney Ed Notargiacomo Thomas M. Sobol steve@hbsslaw.com beth@hbsslaw.com barbaram@hbsslaw.com ed@hbsslaw.com Tom@hbsslaw.com <i>Counsel for Plaintiffs</i>	George E. Barrett Edmund L. Carey Gerald E. Martin Timothy L. Miles gbarrett@barrettjohnston.com tcarey@barrettjohnston.com jmartin@barrettjohnston.com tmiles@barrettjohnston.com <i>Counsel for Plaintiffs</i>	Kenneth A. Wexler Jennifer Fountain Connolly kaw@wtwlaw.us jfc@wtwlaw.us Jeffrey Kodroff John Macoretta jkodroff@srk-law.com jmacoretta@srk-law.com <i>Counsel for Plaintiffs</i>
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/s/ Paul Flum
Paul Flum

EXHIBIT A

DEFINITIONS

The following terms used in this Notice, whether or not capitalized, are defined as follows:

1. “AWP” or “Average Wholesale Price” means the price for drugs as periodically published by several pharmaceutical industry compendia, including the Drug Topics Red Book (the “Red Book”), American Druggist First Databank Annual Directory of Pharmaceuticals (“First DataBank”), Essential Directory of Pharmaceuticals (the “Blue Book”) and Medi-Span’s Master Drug Database (“Medi-Span”). The term “AWP” includes the “Blue Book AWP” published by First DataBank.

2. “Benefits Consultant” means any person and/or entity that provides information, counsel and/or advice to any Third Party Payor regarding any hospital, medical or prescription drug benefit and/or service provided by any Third Party Payor to any Participant.

3. “Communication” as defined in Massachusetts Local Rule 26.5(c)(1), means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

4. “Concerning” as defined in Massachusetts Local Rule 26.5(c)(7), means referring to, describing, evidencing, or constituting.

5. “Document” means Electronic Data and all written, typed, printed, photocopied, photographed, or recorded matter of any kind, including but not limited to all originals, masters, drafts, and non-identical copies of any labels, packaging, invoices, advertisements, catalogs, letters, envelopes, forms, affidavits, correspondence, telegraphs, telecopies, telefaxes, paper communications, resolutions, minutes of meetings, signed statements, tabulations, charts, memoranda, checks, appointment books, records, proposals, memoranda or

other transcripts (by mechanical device, by longhand or shorthand recording, tape recording, or by electronic or any other means), computer-generated information, computer software, information stored or recorded by electronic means (including by a computer, server, hard drive, compact disk, floppy disk, diskette, tape, record, cassette, video, electronic mail, and any other electronic recording or data compilation from which information can be obtained or translated), interoffice communications, all summaries of oral communications (telephonic or otherwise), microfiche, microfilm, lists, bulletins, calendars, circulars, desk pads, opinions, ledgers, minutes, agreements, journals, diaries, contracts, invoices, balance sheets, telephone messages or other messages, magazines, pamphlets, articles, notices, newspapers, studies, summaries, worksheets, telexes, cables, any matters defined in Federal Rule of Evidence 1001, and all other graphic materials, writings, and instruments, however produced or reproduced. A document includes all documents appended thereto.

6. “Drug Company” or “Drug Companies” means a company that manufactures pharmaceutical products, including without limitation, Identified Drugs.

7. “Electronic Data” means all information of all kinds maintained by electronic data processing systems and includes all non-identical copies of such information. Electronic Data includes, but is not limited to, electronic spreadsheets, databases with all records and fields and structural information (including Lotus Notes Discussion Databases and other online dialogs), charts, graphs and outlines, arrays of information and all other information used or produced by any software. Further, Electronic Data includes any computer program (whether proprietary or commercial), programming notes or instructions, or any other software program or utility needed to access or use such Electronic Data as they are accessed or used by You in the usual course of business.

8. “Identified Drugs” shall refer to any one or more of the drugs listed in Appendix A to plaintiffs’ First Amended Class Action Complaint.

9. “Participant” means a person for whom a Third Party Payor provides any medical or health insurance benefit, including prescription drug benefits.

10. “Pharmacy Benefit Manager” or “PBM” means any entity that provides services relating to prescription drug benefits offered by any Third Party Payor to any Participant.

11. “Publisher” or “Publishers” refers to any pharmaceutical price publishing service, including but not limited to the First DataBank, Red Book, Blue Book and Medi-Span publishing services.

12. “Rebates” include access rebates for the placement of products on a formulary, rebates based upon the sales volumes for drugs, and market share rebates for garnering higher market share than established targets, and include rebates received by You or any PBM with which You have a contractual relationship.

13. “Retailer” means any entity, including a retail pharmacy, that resells drugs to consumers.

14. “Third Party Administrator” means any entity that provides administrative services to You relating to any medical benefit provided to any beneficiary of the prescription drug benefits You offer.

15. “Third Party Payor” means any non-government entity or program, including but not limited to, health insurance companies, health maintenance organizations, preferred provider organizations, self insurance plans, health plans, unions, or welfare and benefit plans, that provides prescription drug benefits to Participants and Beneficiaries and reimburses or compensates Retailers for prescription drugs dispensed to Participants and Beneficiaries.

16. “WAC” or “Wholesale Acquisition Cost” means the selling price that a Drug Company charges to a Wholesaler, before discounts.

17. “Wholesaler” means any entity that purchases drugs from a Drug Company and resells such drugs to any other entity, including Retailers.

18. “You” or “Your” shall refer to District Council 37 Health & Security Plan and any of its past or present trustees, officials, officers, fiduciaries, representatives, agents, assigns, attorneys, employees, divisions, departments, affiliates, and all other persons or entities acting or purporting to act on its behalf or under its control.

DEPOSITION TOPICS

The following cover the time period January 1, 1998 to present:

1. Your knowledge, understanding, and expectation regarding WAC, AWP, or other pricing information published or provided by Publishers.
2. Your contracts concerning prescription drug benefits or payments related to such benefits with Retailers, PBMs, Benefits Consultants, Third Party Administrators, or Drug Companies, including the drug pricing terms and metrics (e.g., AWP, usual & customary price) used in such contracts and the terms concerning any payments or rebates related to prescription drugs.
3. The terms of your prescription drug benefit plan, including provisions concerning deductibles, co-payments, or formularies.
4. Your communications with Retailers, PBMs, Benefits Consultants, Third Party Administrators, or Drug Companies concerning prescription drug benefits or payments related to such benefits, including the negotiations concerning Your contracts with such entities.
5. Changes in AWP, WACs, or in the ratio or spread between WAC and AWP, including Your communications concerning such changes and how such changes could have impacted or did impact You.
6. Reimbursements or payments for any Identified Drugs, including formulas used to derive payment amounts for any Identified Drug, and any changes to such reimbursements, payments, or formulas.
7. Your relationship, if any, with any PBMs or Benefits Consultants, including criteria or processes used in selecting such entities to do business with, or, alternatively, your decision not to use PBMs or Benefits Consultants.

8. Drug pricing information from Publishers and any representations or other statements attributed to Publishers concerning such drug pricing information.

9. The claims and allegations made by You in Your First Amended Complaint, including Your claims for damages.

10. Your search for documents requested in McKesson's First Request for Production of Documents.

11. Your filing and recordkeeping systems, policies, and procedures relating to prescription drug benefits, including (a) Your use and storage of documents, including paper records, electronic data, and email, relating to prescription drug benefits; (b) the location and organization of the systems or media that store Your electronic information, the format of such information, and how to access such information; (c) the location and organization of documents relating to Your prescription drug benefits or Your reimbursement payments for drugs; and (d) Your document retention and destruction policies.

12. Your corporate organization, including Your divisions, departments, or employees responsible for prescription drug payments or contracts concerning such payments.